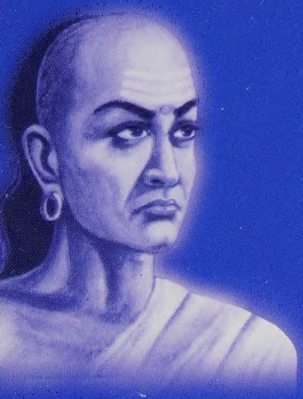
BHAVAN'S BOOK UNIVERSITY

ADMINISTRATION OF JUSTICE IN ANCIENT INDIA

Prof. K Srikantan



Edited by V. RAMACHANDRAN

Bharatiya Vidya Bhavan

SHOUT
SHARE
IT

आ नो भद्राः क्रतवो यन्तु विश्वतः।
ā no bhadrāh kratavo yantu viśvatah
Let noble thoughts come to us from every side
- Rg Veda I-89-i

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by
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V. Ramachandran IAS (Retd.)

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PROF K. SRIKANTAN

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2007

Bharatiya Vidya Bhavan

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CONTENTS

		Page
	Foreword	i
	Editor's Note	ii
	Preface	iv
Chapter		
1	Sources of Information	1
2	The Artha Shastra : Kautilya	14
3	Miscellaneous Sources	36
4	Sources of Law	45
5	Justice : Ancient and Modern	51
6	Courts of Justice in Ancient India	60
7	The State Courts	69
8	The Popular Courts	78
9	The Judges	88
10	The Jury	96
11	Some Cases	99
12	Law of Evidence : Ordeals	107
13	Law of Evidence : Documents	119
14	Law of Evidence : Witnesses	125
15	Law of Evidence : Oaths	133
16	Police Organisation in Ancient India	138
17	Police Organisation : Prevention of Crimes	144
18	Police Organisation : Prosecution	150
19	Police Organisation : The Right of Private Defence	157
20	Police Organisation : Detective Police	163
21	Trial and Judgement	171
22	Lawyers in Ancient India	186
23	Ancient Indian Penal Code : Introduction	191
24	Ancient Indian Penal Code : A Review	211
	Bibliography	215

FOREWORD

Mahamahopadhyaya
Artha Sastra Visarada Vidyalankara
Pandita Raja
Dr.R.Shama Sastry

"Austosh"
Chamundi Extention
04-10-1940

I read with deep interest and admiration Pof. K. Srikantan's book entitled "Administration of Justice in Ancient India." It beams with original and yet reliable information and sources of law and their chronology, Law and Equity, Kings court and people's court, trial by jury, representation of parties by experts, public opinion and espionage, crime and severity of Penal code and other problems of Legal Administration in Ancient India, many of which are hardly dreamt of by modern writers on Indian Law. The volume speaks for itself.

(Sd)

R. Shama Sastry

EDITOR'S NOTE

The Gulatis were on the Faculty of the Centre for Development Studies here- Prof. I.S.Gulati as an Economist and Smt. Leela Gulati as a Sociologist- and had settled down at Thiruvananthapuram. They have been our family friends for over two decades. It was some five years ago that Leela Gulati brought the manuscript of a thesis on the Administration of Justice in Ancient India by her late father Prof. K. Srikantan and asked me to go through it and suggest what could be done with it.

On careful study I found it to be a scholarly work on a very important subject. There was a foreword by the legendary Shama Shastry of Mysore dated October 4, 1940. It appears that it was a draft Ph.D. thesis written in late 1930s, but the process of getting the degree and publishing it seems to have got stopped, because Prof Srikantan took ill and died at a very early age. As the note by Smt. Leela Gulati says, the text was found and handed over to her only in 1999 by a cousin of hers who continued to reside in Bangalore.

In the late nineteenth and early twentieth century, the scions of traditional upper caste families took to English education and to modern vocations like law, teaching in English schools and colleges, as well as government service. As a generation in transition, they had the advantage of good grounding in Sanskrit and English. Those in modern vocations wrote and spoke on ancient texts, many of which were being rediscovered. Many illustrious names come to our minds. Prof. Srikantan belonged to that generation. Though he was a lecturer in economics and later joined the State Service in Mysore, he wrote extensively in journals and magazines on ancient administrative and judicial systems. The present text is Prof. Srikantan's final work on this subject- a work undertaken on the sidelines of a busy life as a lecturer and government servant and during years of failing health. Such lives and their works have more than one lesson for the present generation.

The script had a very large number of quotations and citations. They had to be correlated with the references. This took considerable time and effort and I have done it to the best of my knowledge and ability. There were repetitions in different chapters, which had to be removed and some editing of the text had to be made. I learnt a great deal during the process of editing this great work. Bharatiya Vidya Bhavan which has brought out a number of excellent publications on ancient Indian thought and practice was the natural choice for publishing this work. The process of typing the edited draft getting approval of the Editorial Committee and printing took some time. It is now ready for publication. It is yet another worthy addition to a long list of scholarly publications by the Bhavan.

I am grateful to Sri. G. Gopakumar, Associate Secetary of Thiruvananthapuram Kendra for valuable help in the difficult task of reading the proof, more than once.

V.Ramachandran
Chairman
Bharatiya Vidya Bhavan,
Thiruvananthapuram

Thiruvananthapuram
January 2007

PREFACE

I cannot tell you how delighted I was when I was given this manuscript as a gift, when I visited my cousin in Bangalore a few years ago. My cousin handed me the book saying that it was a very special gift. I had no idea what it was, and was thrilled to find that it was my father's unpublished Ph.D thesis, that he had written in the early thirties. My father passed away when my siblings and I were young, and having to cope with the problems of losing the breadwinner, we had no time to look back on his possible scholarly achievements.

To find a copy of his dissertation after nearly three decades was a shock. I had no idea that he was enrolled in a Ph.D programme, and had written and submitted his thesis to the Mysore University. Dr. K. Ramiah had carefully preserved his dissertation in his library collection that was handed down to his son upon his demise.

My father came from a family of Dikshitars from a village called Kadathur. This is one of the five "K" villages of Tamil Brahmins. My grand parents were Sanskrit Scholars, and entrenched in the traditional ways of life and tradition. My father's family had moved to a village in Nanjangud, famous for its Viswanath Temple, made more famous by Tipu Sultan, the small nanjangud bananas, and B.V. Pandit's tooth powder. My grand father was a lawyer in this small town and the family also owned agricultural land and houses in the village. They were not prosperous, but educating their sons was of importance. While my father was studying at Mysore University, he came to the attention of my mother's father who was the Registrar of the University. My mother's father was specialist in Indian Philosophy and was also a teacher to the then Maharaja of Mysore and to the Swamis of Ramakrishna Mission.

Even though my father was supposedly bright and well read, it was still difficult to secure good jobs. My father started his carrier as a Professor of economics in Madurai and later

shifted to Lingaraj College in Belgaum. During the early forties, Sir Mirza Ismail brought him to Mysore to become the Assistant Director of Industries. Designing and implementing new ways to market the Chennapatana toys was one of my father's main contributions to the development of rural industries. From here, he went on to become the Director of Industries and Textile Commissioner in Indore. Indore was a decadent and backward State in the forties, dotted with textile mills. The books he published during his term in Indore are still considered texts in the development of local industries. Unfortunately he succumbed to illness at the age of forty-four, leaving behind his wife and four children.

It means a tremendous amount to me to have the opportunity to publish and share this piece of work. I am extremely grateful to Sri. V. Ramachandran for his support, help and encouragement. I have no words to express my gratitude to him. But for his perseverance and hard work this book would have never seen the light of the day. I would like also to acknowledge Ms. Lakshmi Nayar for her assistance in working on the manuscript and references.

I dedicate this book to the memory of my father, the late K. Srikantan.

Leela Gulati

Thiruvananthapuram

CHAPTER 1
SOURCES OF INFORMATION

For a study of Administration of Justice in Ancient India the sources of information are many. The 'Viramitrodaya' of Mitra Misra, a work of the seventeenth century, for example, enumerates as many as eighteen 'Smritikaras' (makers of Smritis), eighteen Ugra Smritikaras, (makers of secondary Smritis), and twenty one other Smriti makers, making altogether a total of fifty seven. (1) The eighteen principal Smriti makers are:- Manu, Brihaspati, Daksha, Gautama, Yama, Angirasa, Yogiswara, Prachetas, Satapta, Parasara, Samvarta, Usanas, Sankha, Likita, Atri, Vishnu, Apastamba and Harita.The eighteen secondary Smriti makers are:- Jabali, Nachiketa, Skanda Laugakshi, Kasyapa, Vyasa, Sanatkumara, Sumantu, Pitamaha, Vyagraha, Karshujuni, Jatukarnya, Kapinjala, Baudhayana, Kanada, Viswamitra, Paithinasa, Gobhila. The twenty one other Smriti makers are:- Vashishta, Narada, Sumantu, Pitamaha, Vasu, Krishnan Jina, Satyavrita, Gagya, Bevala, Jamadgni, Bharadwaja, Pulastya, Kratu, Pulaha, Atreya, Chhagaleya, Marichi, Vatsa, Paraskara, Rishyasringa and Baijavapa.Many of these, however, are mere names and scholars even today do not know anything about them. It is no exaggeration to say that the chronology of not even one of these Smritikaras is definitely fixed. One has therefore to be very careful in making use of their works when we note that works often diametrically opposed to one another in their views are attributed to one and the same author. In the words of Julien Jolly (2), "New works of this type (metrical Smritis) arose more and more out of the schools of Dharma and were fathered upon various saints and gods while the actual authors persistently adhered to discreet anonymity". Those names were used by preference, which had already

obtained fame and different works are frequently ascribed to the same author. Thus there are more than one Angirasa, Atri, Apastamba, Usanasa, Katyayana, Gautama, Parasara, Brihaspati, Yama, Likhita, Vasishta, Vishnu, Vyasa, Satapta, Harita. As historical researches stand at present all that a student of history can do is to come to certain tentative conclusions regarding the relative chronology of these Smritikaras. The Smritis appear to be our earliest sources of information for they are invariably attributed to one Rishi or another whose dates again are far in the dim past. The Smritis are of particular importance for they claim to be older than the Dharma Sastra and Dharma Sutras. It is no wonder that the origin of Smritis remains a mystery to modern scholars for we are told that even to the ancient writers the origin of Smritis was a source of great perplexity (3). Without therefore trying to establish the relative chronology of the Smritis or Shastras we can proceed to consider the nature of the contribution of some of the individual law givers on whom we have relied in the following pages.

Manu

Among those lawgivers on whom we have relied for this work, the foremost place should be given to Manu. There is hardly any lawgiver of ancient India who has not quoted Manu. The following, for example are some of the commentators on Manu:- Bharuchi, Viswarupi, Dharandidhara, Govindaraja, Sarvajna, Narayan Medhatithi, Madhava and Kulluka. The pre-eminence of Manu is admitted even by the Vedas(4). Says Angira "Whatever Manu says is Medicine." Prihas says that Manu occupied a pre-eminent position among the lawgivers because he represented the sense of the Veda accurately. Again it is said by another writer "That Smriti which is opposed to Manu (to the sense of Manu) is extinguished". The antiquity of the Manava Dharma Sastra is also indicated by the following citation from Parasara(5). Says he "In the Krita Age Manava Dharma, in the Treta those remembered by Gautama, in the Dwapara those remembered by Sankha and Likita and in the Kali those remembered by

Parasara".In spite of many references to Manu in all religious and legal literature his date is still far from certain. The real difficulty about the chronology of Manu arises from the fact that there appear to have been many Manus - some of them Kings, some Rishis and still others, writers of Artha Sastra. The Kings themselves with the name of Manu appear to have been fourteen in number and each is represented to have ruled over a cycle of years called Manvantara(6). Even among the writers on laws we are told of two Manus - Brihat Manu and Vriddha Manu. Thus even when we know the date of Manu, the lawgiver, the question of chronology remains undecided, for we would still be in the dark as to whether the lawgiver in question is Brihat Manu or Vriddha Manu. That which goes by the name of Manusmriti today draws so much from the Mahabharata that nobody can dispute the statement that it must be post Mahabharata but such a conclusion takes us nowhere for the date of Mahabharata itself is still in the region of discussion. Professor Maxmuller was inclined to place the Manava Dharma Shastra in the fourth century A.D. This view of his however was not based on any internal evidence. He simply relied on a verse of the Vriddha Manu. The view has been questioned by several scholars and Prof. Buhler (7) has disposed of the opinion. Macdonall (8) in his History of Sanskrit Literature says that the code probably assumed its present shape not later than 200 A.D. Jolly after deprecating the fashion of "undue depreciation of the antiquity and historical importance of the Code of Manu" that had "become rather common in these days"(9), assigns it to a period before that of Yajnavalkya which "cannot be referred to an earlier date than the first century A.D." Buhler placed it within comparatively definite limits. He spent a great amount of time over a critical study of the code, and came to the conclusion that the code, as we have it, existed in the second century of the Christian era and was to be dated between the second century B.C. and the beginning of the second century A.D. or somewhat earlier (10).Amazing indeed is the difference of opinion among scholars. Naturally all that we can do is perhaps to narrow down the posterior and anterior limits and adduce the chronology of Manu to a

reasonable span. No one can dispute the fact that the Manava Code is fanatically Brahminical and the Code of Yajnavalkya offers a welcome relief to this orthodox code. The Manava Code suffers from political, social and sacerdotal prejudices. One is therefore compelled to put it to a time when the country was ruled by Brahminical monarchies, for such a code would not be tolerated by non-Brahminical rulers. In the words of K.P. Jayaswal (11) "It is a code as well as a controversy. But if we transfer ourselves to its times, we can imagine how it would have received ready approval from the race to which it was preached. Buddhism and Buddhist state stood discredited. The Garga-Samhita, mentioning a successor of Salisuka Maurya and Panchala would be passing off to the vicious valiant Greeks, Pataliputra itself being in danger and the whole country in consternation. The policy of conquest by Dharma (Buddhism) was a written legacy to his descendants by Ashoka who prohibited further conquests by the sword. The last of his line was talking of this `sublime nonsense' of his forefather to make the conquest of Dharma, while the very existence of the country was in jeopardy. The astronomer Garga summed up the sentiment of the time in his characterization of the last Maurya emperor: Dharmavadi Adharmikah, and Mohatma, 'talking of dharma that anti-dharma' King, 'the fool'. In their eyes he was the religious Nero who looked on with equanimity at the gradual consumption of Hindu civilization (dharma) by the vicious Greeks. The Brahmin (Pushyamitra) took up the sword in this 'Viplava of Dharma', and not only saved the dharma for the time being but also rehabilitated it. He liberated the whole country and completely destroyed the power, which had threatened confusion in the holy land of the Aryas. He proved to them by his valour that the land for the Mlechchhas was beyond Aryavartta. The Sungan Manu translated into terms of dharma-law the contempt for the Sudra and heterodox ruler before whose very eyes the Kingdom was sinking like a cow in the mire, and the exultation of the Brahmin orthodoxy over its achievements. His code is the mirror reflecting the national sentiment of the time. His absurd claims for Brahminism were admitted at the time, for they were based on the facts of the time. The Brahmin, in fact, was

'the lord of every thing' at the moment. Thus it is clear that this Manava Code must have belonged to second century B.C. We might not however be wrong in putting the entire Surga period as coeval with the Manava Dharma Shastra.

Vasishta, Vishnu and Yajnavalkya

The code of the Vasishta, Vishnu and Yajnavalkya is next only in importance to that of Manu. We may however point out that between Manu and Yajnavalkya there were several prominent lawgivers among whom were Vashishta and Vishnu. The Dharmasutra of Vashishta is the first example of the attempt to convert a Dharmasutra into a canonical-secular law-book after the pattern of the Manava Code. The attempt is repeated in the form of the Vishnu-dharma-shastra. The frame work of this Dharma Shastra is a sutra work, whereon there is a super-imposition of the Vyavahara law. The mixture is concealed under the name of God Vishnu. This is the first attempt to attribute a law book to a divine origin. We do not know when the work was ascribed to Vishnu. There are three stages in the development of this work. The first is the framework of a Dharmasutra belonging to a school of the Krishna Yajus, very probably to the Kathas as contended by Jolly. The subject matter of this stage is marked by the usurpation of the function of dictating secular laws. This stage belongs to the intermediary period between the two codes. The third seems to be one when it is given a sectarian Vaishnava clothing, with the inclusion of a lot of non-Dharma Shastra matters. This is post-Yajnavalkyan. The strictly legal portion is important for the purposes of comparison. Vishnu follows Manu, and Yajnavalkya seems to be conscious of Vishnu's law, though in places there are clear cases of borrowing by Vishnu from Yajnavalkya. We can, with the help of Vishnu and Vashishta detect some of the changes introduced in Manu in its revision, and can mark also the process of development of law of Yajnavalkya.

The code of Yajnavalkya is of greater importance to us than even the code of Manu in certain respects. Yajnavalkya was the first to give to Vyavahara (law) a separate chapter.

His treatment of law makes it clear that he was a mature lawyer. He does not give lectures on secular law from the point of view of a Dharma lawyer. On the other hand he lays down clear-cut provisions and divides them into sections. Throughout he exhibits a scientific style. The advanced nature of Yanjnavalkya's code is seen from the fact that his work is free from many of the fanatical premises of others. The profession of arms is once more forbidden to the Brahmin. His claim to sovereignty is ignored. Punishments are also less severe in his code; laws about women are brought in conformity with their social position, already immensely raised by Buddhism. Their right to inherit was fully admitted. In certain respects Yajnavalkya is far ahead of even Kautilya.

One peculiarity about Yajnavalkya however has to be noted. Although he was a writer with progressive tendencies he did not forget the influence of the time in which he lived. Unlike Narada, he adjusted his code to suit the needs and aspirations of his contemporaries. That was because he wanted to give to the people without being noted by them, a Dharma-Vyavahara mixed system of law in place of the old Dharma law. In this he succeeded in a way to which no other lawgiver could lay claim.

The date of Yajnavalkya is still unknown. There appear to have been at least four persons with the name Yajnavalkya-Yoga Yajnavalkya, Vridda Yajnavalkya, Brihat Yajnavalkya and Yajnavalkya the lawgiver. Jolly (12) puts Yajnavalkya to the fourth century A.D., which appears to be rather late. One is inclined to agree with K.P.Jayaswal (13) regarding the date of Yajnavalkya. Says Jayaswal "On the date of Yajnavalkya's code, it has been argued that as the code refers to the Grahas or planets, it must be later than the second century A.D". But as Buhler has pointed out, it is not proved that a work having reference to the Greek astronomy must be dated in old arguments that Ptolemy was the founder of the so called Greek astrology. Buhler's demur to accept the argument is now fully supported. It is wrong to say that the earlier Dharma Shastras do not know the Grahas mentioned in Yajnavalkya.

Baudhayana's Dharmasutra not only knows them but places them in the same order as Yajnavalkya with the same addition of Rahu and Ketu. Baudhayana offers them Parpana (pacification). Yajnavalkya has simply taken them from Baudhayana. The prominence in Yajnavalkya only shows that the belief became stronger.

Similarly references to the worship of Ganesa or Ganapati do not prove any later date of Yajnavalkya. Baudhayana knows Ganapati and the different forms of Vinayaka. Ganapati is found carved in temples of Gupta times. It is to be noted that Ganesa in the Gupta period is a benevolent deity but in Yajnavalkya he is malignant and dreadful.Yajnavalkya counts the Nakshatras from Krittika as the first, which was an ancient system. In the Gupta period the system had been given up and the Nakshatras were reckoned from Asvini. These facts indicate a period anterior to the Guptas. So do the political and social data.

Yajnavalkya does not give any definition of Aryavarta. The heretic is still tabooed, but degrading provisions against nuns have been removed. Meat sraddha is still allowed and bull sacrifice in honour of guests still sanctioned (I.109), though it is omitted from the Sraddha list, where rhinoceros is still retained. Meat eating is at the same time discouraged for the brahmin (I.181). The Atharvan, as a Veda, is yet not fully admitted (I.101, I.3, 9).The punishment provided for the forgery of coins called here Nanaka, proves that the work has to be referred to the closing period of the Satavahanas and about the middle of the Kushan period. Kanishka who founded his dynasty about the end of the first century A.D. had the word Nana on his gold coins. The dynasty was Hinduised; their coins were generally Shaivite. 'Nanaka' became the other name for the Shaivite coin and of coins in general. Contemporary sub-Kings might have had their own Nanakas or might have adopted the Kushan Nanaka in their currency. The period of the code, in view of the above data would be about 150-200 A.D. It cannot be earlier and it cannot be much later either.

Brihaspati

Another lawgiver on whose work we have relied a good deal in the following discussion is Brihaspati (14). Regarding his chronology our position is no better than that on Manu. There are however certain features in Brihaspati's code which enable us to come to certain tentative conclusions regarding the date. For one thing Brihaspati follows Manu more closely than any other law giver and in fact certain passages in Brihaspati are exactly similar to those in Manu. In the chapter on gambling and betting, for example, Brihaspati says 'Gambling has been prohibited by Manu, because it destroys truth, honesty and wealth'. Again both Manu and Brihaspati agree in arranging the whole field of legal controversies under eighteen heads. Brihaspati has the greatest regard for Manu for he maintains that 'any Smriti opposed to the teaching of Manu has no validity', (XXVII 3). To use his own words "However the first rank among the legislators belongs to Manu, because he has embodied the essence of the Veda in his work; that Smriti (or text of law) which is opposed to the tenor of the law of Manu is not approved. (15)" On the subject of weights or coins, Brihaspati says (X 10) 'the quantities beginning with a floating particle of dust and ending with a Karshapana have been declared by Manu.' And this is very true (See Manu 132-137). In several places Brihaspati does not mention the name of Manu, but the close agreement between the two makes it clear that Brihaspati is making use of Manu's code without mentioning his name. In the chapter on debts, Brihaspati remarks that interest is divided into four types, into five by others, by some others again into six parts. Four sorts of interest are mentioned by Manu (VIII 153). From the foregoing it is clear that Brihaspati is later than Manu. He must have been earlier than Sudraka, the author of Mrichhakatika for the court scene in that drama follows very closely the lines laid down by Brihaspati. Mrichhakatika cannot be placed later than sixth century A.D. So Brihaspati must have lived some time between second century A.D. and sixth century A.D(16). There is however a remarkable agreement between Narada and Brihaspati and so it is necessary to establish the relative

chronology of these two before we can say anything finally about the date of Brihaspati.

Narada

For a student of administration of justice in ancient India the importance of Narada (17) and his Smriti cannot be exaggerated for it is the only Smirti completely preserved in manuscripts and in which law, properly so called, is treated by itself without any reference to rules of penance, diet and other religious subjects; it throws a new, important light on the political and social institutions of ancient India. The date of Narada Smriti is also in the region of speculation. There can be no doubt about the fact that he is later than Manu for he shows his indebtedness to Manu is several places in the colophon of the Ancient Nepalese manuscripts of the Narada Smriti. As a matter of fact Narada gives a history of the code of Manu and develops many thoughts of Manu. Again, his judicial theory shows an infinitely advanced stage of development and his use of many legal terms and explanation of subtle distinctions show clearly that his Smriti is more recent than not only Manu but also several other lawgivers. Thus the probable date of Manu may be of use in arriving at the date of Narada. There must have been considerable interval of time between Manu and Narada, for apart from Narada Smriti being far advanced to that of Manu the points of difference are also many. He allows remarriage of widows; he ordains that in a partition of the family property the father may reserve two shares for himself and an unmarried sister take the same share as a younger son; he again lays down a different gradation of fines from those laid down by Manu.The drama Mrichhakatika (18) closely follows the procedure laid down by Narada in his interesting chapter on Procedure. The drama itself is assigned by competent authorities to sixth century A.D. Concluding his discussion on the date of Narada, Jolly writes as follows "Thus the Narada Smriti agrees on many important points, especially in the law of evidence with the Dharmasatras or Smritis of Yajnavalkya, Vishnu, Brihaspati, Katyayana and Vyasa. It may be a little older than the three

last named works, which belong to the latest production of the Smriti epoch of Hindu law but its legal rules and judicial theories have decidedly a more advanced character than either Vishnu's or Yajnavalkya's. The Smriti of Vishnu cannot belong to an earlier period than the third century A.D. and the Yajnavalkya Smriti is not likely to be anterior to it in date. We can therefore put Narada between third century A.D. and sixth century A.D. There are however certain pertinent factors pointing to an earlier date to Narada. In the Mahabharata several opinions are attributed to Narada. But as the date of Mahabharata remains still unknown nothing can be said on this about chronology. Prof. Bhandarkar hazards the conjecture that Pisuna referred to by Kautilya is no other than Narada in which case Narada could be carried to a date far earlier than third century B.C. Unfortunately this is an assumption based on unsupportable arguments. "Beyond the bare fact that Narada is often credited in the Puranas with the role of instigating feuds and quarrels and that the word Pisuna means "Wicked, back-biter", there is nothing to support this identification"(19).

Apastamba

Apastamba (20) is an important lawgiver and his treatise on law has been used by many of the later writers. Apastamba belongs to the class of Sutra writers who according to most authorities must be placed earlier than writers of Dharmasatras. "Next to the Vedas come the Sutras which follow the Vedas very closely. Next in date to the Dharma Sutra come the Dharma Shastras". The date of Apastamba therefore is before Patanjali's Dharmasutras although he does not mention Apastamba by name. It is quite possible that he had Apastamba Sutra in view. The date of Patanjali is fairly certain and so Apastamba will have to be placed in second century B.C. if not earlier. Speaking of the date of Apastamba, says Jolly (21)" Linguistically this work is full of archaic anomalous forms and phraseology which can only be explained on the hypothesis that it was finished before the canon of Sanskrit language established by Panini attained ruling power". Buhler places it in fourth century B.C. The

Dharma Sutra of Hiranya Kesin is closely connected with that of Apastamba. According to tradition Apastamba is older than Hiranya Kesin. Baudhayana is the alleged author of the Sutra collection. Its high antiquity follows from the tradition recorded in two interpolated passages in Baudhayana, that Baudhayana School is older than the Apastamba School and that on the whole it is the oldest of the Sutra schools connected with the Taittreya text.

Gautama

Gautama's Dharma Sutra according to Jolly belongs to that class of Dharma Sutras, which he calls 'revised'. In the words of Jolly "Those Dharma Sutras may be called revised Dharma Sutras which are not actually handed down in the manuscripts as part of a collection of the Vedic Sutras but in form and contents are like the proper Dharma Sutras and are quoted in the law books of the medieval age or even earlier". The best representative of Dharma Sutras of this kind is the Gautama Dharma Sutra. Gautama like Apastamba has an important chapter on Civil and Criminal Law. He also speaks of the sources of law. Says he(22) "His administration of justice shall be regulated by the Vedas, the institute of the sacred law, the Angas and the Puranas. The laws of countries, castes and families, which are not opposed to the sacred records, have also authority". (XI 19-20) Gautama's work is called a Dharma Shastra; yet it resembles very closely a Sutra. Again Gautama is known in tradition as a teacher of the Samaveda. According to Dr.Burnell, a Pitramedha Sutra is ascribed to a teacher of the Samaveda called Gautama. Again in Baudhayana is found one whole chapter on Gautama. These facts, says, Buhler, will suffice to show that the Gautama Dharma Sutra may be safely declared to be the oldest of existing works on sacred law. This conclusion is agreed to by Prof. Stenzler. The mention of Yavana by Gautama however goes against the early date given by these writers for we know the Yavanas were unknown in India before third century B.C. To this criticism Buhler replies as follows, "This estimate is certainly erroneous, as there are facts tending to show that at least the inhabitants of North Western India became acquainted with the Greeks about 200

Years earlier." As historical researches stand at present we cannot add anything to what has been said by these scholars.In the above paragraphs we have touched upon the works of Manu, Yajnavalkya, Brihaspati, Narada, Apastamba and Gautama. This certainly does not exhaust the list of lawgivers whose works we have made use of in the following pages. But of men like Baudhayana, Parasara, Pitamaha and others, precious little is known and we have thought it wise to refrain from worrying the readers with details which lead nowhere.

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CHAPTER 2
THE ARTHA SHASTRA - KAUTILYA

In this chapter we propose to study the Artha Shastra literature and assess their value to a study of the Administration of Justice in Ancient India. Artha Shastra writers based their systems primarily not on the scriptures, but on reason and expediency (1). They acquired considerable influence and almost challenged the supremacy of the Dharma Shastras. Narada (2) would like the two to be reconciled, but said that if that were impossible, the Artha Shastra must be abandoned and the Dharma Shastra followed. Yajnavalkya (3) emphatically declares the Dharma Shastra to be more powerful than the Artha Shastra. The Bhavishya Purana bars the authority of the Artha Shastra when it is opposed to the Dharma Shastra. It would appear that orthodoxy prevailed over the years. That partly accounts for the loss of the Artha Shastra literature. But a good deal of its subject matter was incorporated into orthodox schools. This process had commenced as early as the age of the Mahabharata. Abul Fazal's (4) review of Hindu Raja Niti or Statecraft in his Ain-i-Akbari may be believed to reflect the notions of Hindus on Government in the 16th Century. It is more of Artha Shastra than Dharma Shastra.

Although the Artha Shastra writers were many, we hear only of two - Kautilya and Brihaspati (5). About the latter we have already made a reference in the last chapter and as the work is still in the region of interpretation it is not of much value for our purposes. Kautilya's Artha Shastra (6) has become the centre of an enormous amount of literature. This work is of very great importance for the subject we have taken up for

discussion and so in the following pages we have tried to give an account of Kautilya, his date and his achievements.

Kautilya, better known as Chanakya, is one of the most interesting and intriguing personalities of history. It is really unfortunate that in spite of the remarkable advance in the Indian historical studies, very little is known about such an eminent person like Kautilya. The intellect of Kautilya was so marvellous that it baffles description. In fact on this very ground some scholars doubt the historicity of Kautilya. To them Kautilya is merely a figment of the imagination of Vishakadatta (7), the author of "Mudra Rakshasa", where Chanakya is the "de facto" hero. The little that we know of Chanakya today is partly due to the drama and partly due to the references in the Puranas.

He was the son of one Chanakya: one of his ancestors was one Kautilya after whom he was named. He seems to have been better known to the people of his time as Vishnu Gupta. His extraordinary wisdom earned for him the title of Sarvajna and Buddha. He took a keen interest in his ward Chandra Gupta (8), a half brother, of the ruling Nanda Dynasty.

Once, the story goes, when Chanakya was in the court of the Nandas with Chandra Gupta, he was spitefully ousted from the seat of honour and insulted by the members of the court of Nanda. The Guru and the Sishya felt highly offended and left the court determined to destroy the Nanda Dynasty. For 12 years, Chanakya fought a secret battle and killed all the Nandas one after another and won the Empire for Chandra Gupta Maurya. This in short is the account given in the Puranas and the drama.

Kautilya must have been, if an inference can be made from references in the Puranas and "Mudra Rakshasa", a man of middle height, black haired with rather a small head, very bright eyes and slightly aquiline nose. His thin close lips must have often broken into a smile of sarcasm and he must have been, like Machiavelli(9), cynical in his correspondence. He must have been a man of indefatigable energy and feverish activity.

A careful study of Chanakya and his works leads one to incline to the view that Chanakya was an orthodox Brahmin of the south who proceeded to north India to earn his bread. This is not an untenable claim in view of the fact that the only copy of the "Artha Shastra" so far discovered, is from the south. Prof.Jolly (10) observes "the geographical horizon of the author, on the whole, points to a southern rather than to a northern home. Thus in the discussion of trade routes the south is declared to be preferable because shells, diamonds, gems, pearls and gold are to be found in abundance in the south and in the matter of examination of gems, South India and Ceylon occupy a prominent place".

The earliest known literature of the Tamilians called the Kural follows the "Artha Shastra" very closely and some of the verses appear almost to be the Tamil translation of Kautilya's verses (11). Some of the methods recommended by Kautilya in his book on "Removal of the Thorns" are found in practice even now in the south particularly in Travancore State (12). To add to this we have the story of Chandra Gupta Maurya going to the south in the Sravana Belagola inscription (13). This might have been due to Chanakya, who himself, according to Hemachandra was a Jain (14).

Our interest in Chanakya is enhanced by the fact that he was the first practical philosopher in the history of India. He was a stern realist and a shrewd observer of men and matters. Speaking about bribes he says (15) "Just as it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for a Government servant not to eat up, at least, a portion of the King's revenue. Just as fish and water, so Government servants employed in the Government work cannot be found out while taking money for themselves."

Imaginary and impossible ideas have no interest whatsoever to him. His purpose is to get at the actual truth of things. To him political science was not mere congeries of moral and religious precepts. In short, politics to him was merely a dignified name to statecraft and the piloting of the ship of state depended largely upon diplomacy. "The archer's arrow", says

he (16), "may slay one or it may not, but the cunning of the wise slays foes ere they are even born."

If Kautilya was great as a political strategist, he was even greater as a practical economist. He can justly be called the first economist in the history of India. The state, as conceived by Kautilya, is predominantly an economic one. He introduces a significant change in the traditional list of the three ends of human existence namely Dharma, Artha and Kama by giving a distinct precedence to Artha over Dharma (17).

He says (18) "Wealth is the basis of virtue and enjoyment." This view he makes clear again by saying: "It is wealth and wealth alone which is of supreme importance, for every virtue depends upon it." Thus he was the first to subordinate Dharma to Artha, for every virtue depends upon it. In so doing he did not scoff at religion like the philosophers of the Carvaka School. On the other hand, he upholds the caste system and grants numerous concessions to saints and sages.

Kautilya's economic views sound strikingly modern. He speaks about controlled currency and credit. The minting of coins was a state monopoly and it was the duty of the superintendent of the mint to regulate the issue of the legal tender and token coins. He speaks of a 'Pana', half a 'Pana', quarter and one-eighth 'Pana'. The copper coins were divided into a "Mashaka', half a "Mashaka', 'Kakani' and half a "Kakani'.

Kautilya again speaks of Adesha-somewhat akin to a modern bill of exchange. It is an order to a third person to pay up a sum of money on behalf of the sender of the order. Kautilya in another part of his work penalises those traders who unite in causing rise and fall in the value of articles and live by making profits of cent per cent.

Kautilya fixes the profit that each trader was entitled to get. It was the duty of the superintendent of the market to see that nobody exceeded the limits set by the Government. Five per cent over and the above the cost of production was allowed

in the case of local commodities and 10 per cent in the case of foreign commodities. Merchants who increased the price beyond this even to the extent of half a 'Pana' were liable to be fined.

It is interesting to note Kautilya speaking about middlemen and their brokerage. Here again it was the duty of the superintendent of commerce to see that the middlemen did not carry away everything. Kautilya took considerable interest in the solution of the unemployment problem. The remedies suggested by Kautilya can be classified as religious and political. Religious remedy consisted in persuading the rich people to build choultries, travellers' bungalows and to feed people as often as possible on religious occasions. Kautilya relied largely on his spies to carry on this kind of work; the remedy consisted in the confiscation of the property in the hands of the rich people and distributing it to the poor, of course, this was resorted to only occasionally. The State also constructed poor houses and gave unemployment doles to the old and the infirm. Products were collected in lieu of taxes and were sold by the State. This was perhaps responsible for the stringent regulation of prices, for the State itself was a competitor in the market with private individuals.

Kautilya was an uncompromising believer in monarchy. To him the power of the King (who occupied the highest position in the State) was absolute. "In the absence of the King", says Kautilya, "exercising coercive authority, the strong would overpower the weak". In fact there could be no State without a King and so Kautilya is very anxious about the safety of the King. He devotes four chapters in Book I giving instructions to the King as to how he should take precautionary measures to shield his person against the secret working of enemies, the vagaries of the princes and the intrigues of the harem.

The position of the Prime Minister and all the officers below depended on the sweet will of the King. Except on occasions of emergency and defence, they should not contemplate any project without communicating it to their lord-the King. Kautilya makes it clear that a King is not bound by

the view of the majority. In his chapter on 'Mantradhikara', Kautilya observes, "In critical moments, the King shall summon his Ministers individually and collectively and deliberate with them. He shall either act up to the decision of the majority or to that which appears to bring success."

While giving such unlimited powers to the King, Kautilya is not oblivious to the fact that there might be misuse of powers by the King. So Kautilya repeatedly warns the King and wants him to realize that his welfare was bound up with the welfare of the people. Here, Kautilya shows himself to be superior to Machiavelli with whom Kautilya is often compared to his disadvantage.

To the Italian prince, the main concern was the governing party and not the governed. In fact he was callously indifferent to the welfare of the people. But to Kautilya, a King is to behave in such a way that he is to be feared but not hated. He insists upon the King being ever active. All human affairs, says Kautilya, are in motion and it is impossible to stand still; they must progress or decline and where reason does not lead, necessity often drives. The King was to be accessible to people at all hours of the day and night. When Asoka (19) says in one of his rock inscriptions that his people could see him at any time and in any place-even if he were in the harem, in the kitchen or in the worship room-we are reminded of the sage counsel of Kautilya.

"It is exertion of industriousness which is mainly responsible for bringing in new acquisition and prosperity to the King. It is the duty of the King to provide for the orphans, the aged, the infirm, the afflicted and the helpless with maintenance." The extraordinary interest that Kautilya wanted his King to take in the welfare of the subjects would be clear from his observation that it was the particular duty of the King to take care of pregnant women who were helpless and provide for their children (20).

It is impossible to think of another writer on political science whose solicitude for the welfare of the poor and the helpless would exceed that of Kautilya. He was a believer in

benevolent monarchy and he thought a well-intentioned monarchy represents the unsophisticated voice of the masses better that any representative institutions could do.

It is not often realized that these were the very principles that Asoka followed and the success of Asoka was as much due to his own character as to the wise policy laid down by the Guru of his grandfather Chandra Gupta Maurya. Asoka also did not believe in representative institutions. In all the inscriptions of Asoka (21), we find his extraordinary desire to be a benevolent monarch. His welfare was not different to him from the welfare of his subjects. When he says "All men are my children" we cannot but realize that Asoka was only quoting from Kautilya, who repeatedly insists upon the King taking a paternal interest in his subjects.The fame of Kautilya today is entirely due to his masterly treatise called the Artha Shastra, which was discovered by Pandit Ganapati Sastri in the early 1900s, in the Tanjore Library. It was first published by Dr. Shama Sastry in 1909 in the Mysore Sanskrit Series. When one reads through the Artha Shastra, one is reminded of Machiavelli and some of the observations of the latter appear to be almost a Latin translation of Kautilya's sayings (22). To Kautilya, as to Machiavelli, "where the safety of one's country is at stake there must be no consideration of what is just or unjust, merciful or cruel, glorious or shameful; on the contrary every thing must be disregarded save that course which will save her life and maintain her independence." Says, Machiavelli, "The prince must appear all sincerity, all uprightness, all humanity, all religion, but he must have his mind so disciplined that when it is necessary to save the state, he can act regardless of public opinion." Statements to this effect are found in abundance in Kautilya's Artha Shastra. To Kautilya, a King can no more be guilty of deception than a Brahmin can be guilty of killing an animal in sacrifice!

The work itself is divided into 15 Adikarna, 180 Topics and contains 36,000 slokas. The major portion of the work is in prose and verses are found scattered here and there. There is a unity of design and careful planning indicating the singularity of authorship. The main body of the work follows

closely the plan of the work given in the 15th Adikarna. Even a rough survey of the Adikarnas makes it clear that the Artha Shastra is almost an encyclopedia of ancient Indian wisdom.

Adikarna I is concerned with the discipline and early training of the prince, appointment of ministers, institution of spies and the personal safety of the King. Kautilya wants the prince to learn Anvikshaki, Trayi, Varta and Danda Niti. In the words of Kautilya "Anvikshaki comprises the philosophy of Sankya, Yoga and Lokayata. Righteous and unrighteous acts are learnt from the triple Vedas; wealth and non-wealth from Varta; the expedient and the inexpedient as well as potency and impotency from the science of government. When seen in the light of these sciences the science of Anvikshaki is the most beneficial to the world, keeps the mind steady and firm and bestows excellence of fore-sight, speech and action". In his chapter on Danda, Kautilya warns the King against the misuse of Danda. "Whoever imposes severe punishment becomes repulsive to the people; while he who awards mild punishment becomes contemptible. But whoever imposes punishment as deserved becomes respectable. For, punishment when awarded with due consideration makes the people devoted to righteousness and to works productive of wealth and enjoyment; while punishment, when ill awarded under the influence of greed and anger or owing to ignorance, excites fury even among hermits and ascetics dwelling in forests, not to speak of householders." Kautilya's discussion on the appointment of ministers gives an idea of his approach.

"The King" says Bharadwaja, "shall employ his classmates as his ministers; for they can be trusted by him in as much as he has personal knowledge of their honesty and capacity". "No" says Visalaksha, "for, as they have been his play- mates as well, they would despise him. But he shall employ as his ministers those whose secrets, possessed in common are well known to him. Possessed of habits and defects in common with the King they would never hurt him lest he would betray their secrets." "Common is this fear", says Parasara, "for under the fear of betrayal of his own secrets,

the King may also follow them in their good and bad acts. Under the control of as many persons as are made aware by the King of his own secrets, might he place himself in all humility by that disclosure. Hence he shall employ as ministers those who have proved faithful to him under difficulties fatal to life and are of tried devotion." "No", says Pisana, "for this is devotion, but not intelligence. He shall appoint as ministers those whom when employed on financial matters show as much as or more than, the fixed revenue and are thus of tried ability". "No", says Kaunapadanta, "for such persons are devoid of other ministerial qualification; he shall therefore employ as ministers such persons by virtue of their knowledge of past events and of an established relationship with the King will, though offended, never desert him; for such faithfulness is seen even among dumb animals; cows, for example, stand aside from strange cows and keep company with accustomed herds." "No", says Vatavyadhi, "for such persons, having acquired complete dominion over the King begin to play themselves as the King. Hence he shall employ as ministers such new persons as are proficient in the science of polity. It is such new persons who will regard the King as the real scepter bearer and dare not offend him". "No", says the son of Baherdanti (woman); "for a man possessed of only theoretical knowledge of, having no experience of practical politics is likely to commit serious blunders when engaged in actual works. Hence he shall employ as ministers such as are born of high family and possessed of wisdom, purity of purpose, bravery and loyal feelings, in as much as ministerial appointments shall depend purely on qualification." "This", says Kautilya. "is satisfactory in all respects; for a man's inability is inferred from his capacity shown in work and in accordance with the difference in the working capacity."

Elaborate are Kautilya's regulations regarding spies and their appointment. Says he "assisted by the council of his ministers tried under espionage, the King shall proceed to create spies; spies under the disguise of a fraudulent disciple, a recluse, a house-holder, a merchant, an ascetic practicing austerities, a class mate or colleague, a fire brand, a poisoner

and a merchant woman." These spies were employed to watch the work of several officers of Government. "Of those spies", says Kautilya, "those who are of good family, loyal, reliable, well trained in the art of putting on disguise appropriate to countries and trades and possessed of knowledge of many languages and arts, shall be sent by the King to espy in his country the movements of his ministers, priests, commanders of the army, the heir apparent, the door keepers, the commissioner, the city constable, officer in charge of the city, the superintendent of translations, the superintendent of many factories, the assembly of councillors, heads of department, the commissary general and officers in charge of fortifications, boundaries and wild tracts."

Adikarna II deals with the many departments of Government. There were more than 20 departments and each appears to have had a superintendent of its own. There were superintendents for prostitutes, elephants and liquor. Kautilya describes in this Adikarna in detail the work of the city superintendent. Each city had four gates each called after the name of a particular God-Brahma, Indra, Yama and Sainaptya; "In the center of the city apartments of God such as Aparajita, Aparatihta, Jayanta, Vaijayanta, Shiva, Vaisravana, Asvina and the abode of goddess Madira shall be situated. In the corners guardian deities of the ground shall be appropriately set up."

Adikarna III deals with law while Adikarna IV might well be called Mauryan Penal Code. In these two Adikarnas, Kautilya exhibits a sense of justice far superior to those exhibited by the previous or subsequent lawgivers. To him the very stability of the State depended upon a proper administration of justice. It was the duty of the King to deal out justice in strict conformity to the principles of equity. He could find no reason for continuing the time-honoured gradations of punishments. All were equal to him before 'law'; nobody could claim exemption from punishment by virtue of his birth or heredity. Says Kautilya "Danda alone, if wielded by a King with equity and in proportion to the crime committed, equally over his son and his enemy is capable of securing this and the

next world." Kautilya insists again and again on probity of judges. An erring judge was liable to severe punishment and even dismissal ultimately. "When a judge or commissioner imposes an unjust corporal punishment, he shall himself be either condemned to the same punishment or made to pay twice the amount of ransom leviable for that kind of injustice."

The Kautilyan Penal Code provides punishments even for washermen who delayed bringing the clothes. Speaking of washermen, Kautilya says, "Washermen shall wash clothes either on wooden planks or on stones of smooth surface. Washing elsewhere shall not only be punished with a fine of six panas, but also be subject to the payment of a compensation equal to the damage. Washermen wearing clothes other than such as are stamped with the mark of a cudgel shall be fined three panas. For selling, mortgaging, letting out for hire the clothes of others, a fine of 12 panas shall be imposed. In case of substitution of other clothes they shall not only be punished with a fine equal to twice the value of the clothes, but also be made to restore the true ones. For keeping for more than one, two, three or four nights clothes which are to be made as white as jasmine flower or which are to attain the natural colour of their threads on washing on the surface stones... proportional fines shall be imposed." Kautilya is more anxious about a proper administration of justice than many of the preceding or succeeding lawgivers. Before an accused is convicted of murder, he insists on the body of the victim being subjected to a post mortem examination. Kautilya again is very hard on people who commit suicide. "If a man or a woman under the infatuation of love, or anger or other sinful passion commits or causes to commit suicide by means of ropes, arms, or poison, he/she shall be dragged by means of a rope along the public road by the hand of a chandala". Even people who perform funeral ceremonies for them shall be punished.

In the words of Beni Prasad, "Kautilya's judicial system is most elaborate, but there is nothing to indicate how far it corresponded to facts." The details smack too much of theory and must be left out of account. Of course, the King is the highest court of justice. Kautilya wants courts to be established

in places, which formed the headquarters of the circles of eight hundred, four hundred, and two hundred villages and at the meeting-points of districts, and at the headquarters of village circuits. The courts were of two descriptions, the Dharmasthiya and Kantakasodhama, roughly, civil and criminal, though their spheres overlap and the latter is also invested with some police and executive functions. The judicial branch consists of three judges. The whole administration is presided over by the Chief Judge. Equity prevails over the letter of the law but the Kautilya penal code is a stern one. Ordinary wounding is to be punished with corresponding mutilation of the offender, perjury with mutilation of the extremities. Injury to a sacred trée, evasion of title on goods sold, and intrusion on the royal procession going to the hunt; all alike might be capitally punished. In a passage of general application, however, Kautilya counsels moderation in the infliction of punishments. The procedure prescribed by Kautilya with a marvelous fullness of detail, is remarkable for its insistence on recording everything, for its rules on witnesses, their qualification and disqualifications in particular cases, their travelling and sumptuary allowances, their cross examination and punishments in case of perjury.

Adikarna V is concerned with the conduct of courtiers. Here Kautilya explains the various ways of replenishing the treasury. "They, (meaning Kings' employees) may demand of cultivators one fourth of their grain and one sixth of forest produce and of such commodities as cotton, wan, fabrics, barks of trees, wool, silk, medicines, sandal, flowers, fruits, vegetables, firewood, bamboos, flesh, and dried flesh. They may also take one half of all ivory and skins of animals and punish with the first amercement those who trade in any article without obtaining a license from the King". But Kautilya also suggests certain very questionable methods of collecting revenue through the institution of spies. "Those who maintain prostitutes shall with the help of the women noted for beauty and youth in service of the King, collect revenue". Again, 'persons taken in concert shall publicly pay handsome donations and with this example the King may demand of others among his subjects'. Kautilya is almost hateful when he

says "Spies under the guise of sorcerers, shall under the pretence of ensuring safety carry away the money, not only of the society of heretics and of temples, but also of a deadman and of a man whose horse is burnt, provided that it is not enjoyed by brahmins."

Adikarna VI and VII are concerned largely with the concept of sovereignty and inter state relations; Kautilya exhibits here a very profound knowledge of International law. The Adikarna speaks about the several troubles of the King arising from army, from friends and from finance. Adikarna IX is concerned with the various ways of overcoming an enemy. He discusses in detail the alternative strategic means to overcome a strong enemy. Adikarna X is of great importance to students of military service. Kautilya defines a camp and gives detailed instruction regarding marching. He describes a battlefield and shows the work to be assigned to the several limbs of the army such as the cavalry, infantry, chariot and elephants. He then speaks about the several arrays of the army like the staff, the snake and the circle. Adikarna XI is concerned with causes of dissension and secret punishment. Adikarna XII is concerned with the duties of a messenger, battle of intrigue, slaying the commander-in-chief and inciting a circle of state spies with weapons, fire and poison, and destruction of supply, stores and granaries; capture of the enemy by means of secret contrivances or by means of the army; and complete victory.

Adikarna XIII speaks of dissensions, their causes and the means of escaping from them. It then speaks about the part to be played by the spies in a single siege and also about the ways and means of restoring peace in a conquered country. Adikarna XIV is entitled 'secret means' and is a very important Adikarna deserving careful study and experiment at the hands of our scientists. Kautilya speaks of several methods by which enemies could be killed. "The powder prepared from the carcass of animals such as Chitra, Bhika, Kaundin, Yaka, Kirkana, Panchakushta and Stapadi; or of animals such as Uchchidinga, Kambali, Krkalesa. The smoke caused by burning the above powders causes instantaneous death. Any of the above insects

may be heated with a black snake and priyangu and reduced to powder. This mixture when burnt causes instantaneous death. Again Kautilya suggests various methods by which a man could be made blind or dumb. "The smoke caused by burning the skin of a snake, the dung of the cow and the horse, and the head of a blind snake causes blindness. The mixture prepared from the powder of the knot of the tongue of bhaja and nakerla, reduced to a paste with the milk of a she-donkey, causes both dumbness and deafness". Again Kautilya speaks in this Adikarna of the methods by which a man can become invisible and also the methods by which a man can see through darkness. It is again interesting to note the medicines recommended by Kautilya by taking which a man could fast conveniently for a month. In short in the Adikarna are found several charms and medicines to stupefy animals, to make the doors open, to break a bow, to cause the organs of a man to swell, to cause blindness, to cause the loss of livelihood, to impoverish a rich man, to change the human appearance of a man; to cause a little food stuff to become unlimited, to attract cows and to cause the collection of fruits before oneself. It is really unfortunate that nobody has come forward to scientifically examine the claims made by Kautilya for many powders and herbs he has suggested. We may not agree with the suggestions that Kautilya makes regarding their use; nevertheless it is worthwhile knowing the truth of his claims.

Adikarna XV is concerned with the general plan of the work. The above in short is the summary of the Artha Shastra as is known to us today.

The date of Kautilya is still in the region of doubt. Some scholars even doubt the historicity of the statesman while others think that the Artha Shastra could not have been the work of one man. To begin with we may observe that Kautilya belonged to a period subsequent to the four Vedas, the six Vedangas including the Ithihasa, Purana, Dharma Shastra and Artha Shastra. He also knows the Samkya and Lokayita schools of thought. If Kautilya was subsequent to these we can also state that he must have been earlier than Dandin, Bana and Kamandaki, all of whom make very clear reference to Kautiliya

and his Artha Shastra. Thus broadly speaking Kautilya must have lived somewhere between 400 B.C. and 200 A.D.

The Puranas make Kautilya a contemporary of Chandra Gupta and there is no reason to doubt this contemporaneity as the same is conclusively endorsed by the famous drama on Kautilya called Mudra Rakshasa. The Puranas tell us that Chanakya was responsible for placing Chandra Gupta Maurya on the throne. Says the Vishnu Purana (23) "First Mahapadam; then his sons only nine in number, will be the lords of the earth. Those Nandas, Kautilya, a Brahmin will slay. On their death the Mauryas will enjoy the earth. Kautilya himself will install Chandra Gupta on their throne. His son will be Bindusara and his son Asoka Vardhana". Kautilya himself says in the Artha Shastra "this Shastra has been made by him who from intolerance of misrule quickly rescued the scriptures and the science of weapons and the earth which had passed to the Nanda King". The date of Chandra Gupta Maurya however is still controversial. Some scholars doubt the validity of Sandrokottas-Chandra Gupta Synchronism. It has to be pointed out here that even if we doubt the Sandrokottas-Chandragupta Synchronism, it is possible to establish the date of Chandra Gupta as 320 B.C. on other grounds (24). In Rock Inscription XIII Asoka (25) refers to a number of foreign Kings whose dates are definitely known. Says he, *"yojana Satesu yatra Antiochonama Yonaraja Paramcha tine Antiochonama, Chaturae rajani Turanaye Nama Amitikini Nama Makanama, Alika Sudaro nama"*. From the date of Asoka it is possible to go back to the date of his father Bindusara and grandfather Chandra Gupta Maurya. Even this only leads us to fix 320 B.C. as the date of the Mauryan revolution, which ended in the enthronement of Chandra Gupta. The inscriptions of Asoka repeatedly echo some of the sentiments of the Mauryan statesmen. The inscriptions tell us that Asoka lived for the sake of his people. He exerted at all hours of the day and night. Asoka's edicts follow closely the rules given in the Artha Shastra regarding royal writs. Kautilya divides royal writs into four types and describes in detail their frame and composition. We find Asoka following these rules in his inscriptions from salutation to the

signature of the engraver. The Hattigumpha (26) inscriptions of Kharavela of Kalinga follow closely the direction of Kautilya in the matter of the training to be given to princes. All these make it clear that Kautilya must have been earlier than Asoka and Kharavela and Kalinga. Again we find that the famous Hindu storybook, called the Panchatantra, which is fixed in second century B.C. by some scholars, is only a commentary on the Artha Shastra in the form of stories. Add to all these, as already stated, the famous South Indian Poet Tiruvalluvar follows closely the Artha Shastra in his Kural(27). Thus there can be no denying the fact that there could not have been a long interval between Kautilya's Artha Shastra and Tiruvalluvar's Kural. The Tamil scholars give to Kural a date some time in third century B.C. for no body will grant that Kautilya has borrowed from the Kural of Tiruvalluvar. There is hardly any reference in the whole of the Artha Shastra to anything distinctly Buddhistic except one passage (III20) where a fine of one hundred panas is prescribed for him who invited to dinner in honour of Gods, an Ajivika or Sudra ascetic. This makes the Artha Shastra earlier than Asokan period when the Dharma of Buddha received an extraordinary impetus. If Kautilya had lived after Asoka, then he could not have escaped making more pointed reference to Buddhism and Buddhist monks. Thus this is enough evidence to establish that Kautilya was a contemporary of Chandra Gupta Maurya and that he lived in about 320 B.C. It is however strange that this view which is based upon several carefully considered arguments should be contested by some of the outstanding scholars, prominent among whom are Prof. Winternits (28), Prof.Kieth (29), Prof. Jacobi (30) and Prof.Hille Brandt (31), some of them even doubting the historicity of Kautilya. They ask how a poor Brahmin could succeed in effecting a revolution of such magnitude, as Mahapadma Nanda was no ordinary Emperor-having as he did one of the mightiest armies in the history of India. These critics have to be told that the revolution was not brought about by Kautilya alone. Vishakadatta in his Mudra Rakshasa makes mention of one Parvatka who has been identified with Porus by some, and the King of Nepal by others, as having helped Chandra Gupta in effecting the revolution.

We have to rely mostly on Greek writers as to how Chandra Gupta conquered Magadha as Chanakya never drops a hint on the subject. A curious story is given by Justine. He says that Chandra Gupta became King in a miraculous fashion with the help of a lion and an elephant, which came to him. This is probably a legendary way of representing the fact that he received substantial aid from Kings whose emblems were the lion and the elephant. The Kings of Kautilya had elephants as their emblem. There is even now an important town named Gajapati Nagaram. The other is Simhapura where there was a kingdom as ancient as Taxila. It is quite possible that the Mauryan revolution was effected by Chandra Gupta Maurya with the brain of Chankya and the strength of the Kings of Nepal, Kalinga and Simhapura. The objections of these scholars are not un-assailable. It is held for example by Winternits that as there are no references in the Artha Shastra to Chandra Gupta, the work could not have been written in his time and Kieth points to the same conclusion by observing that even Pataliputra, the capital of the Mauryas is not mentioned in the Artha Shastra. The objection can easily be met by saying that there was no need to mention either Chandra Gupta or Pataliputra in a general book on political science and this *'argumentum ex silentium'* proves nothing. Several books on political science published in England do not mention the name of George VI and from this it would be preposterous to conclude that they are not contemporaries of George VI.

Kalidas Nag curiously argues that the diplomacy of Kautilya is not that of a centralised empire, but that of a very divided feudalism in which each chief is in perpetual conflict with his equals for hegemony and in his turn is crushed by a new series of wars. Thus the diplomacy of Kautilya is either anterior or posterior to Mauryas. Nag goes so far as to say that he does not find the word Chakravartin in the whole body of Artha Shastra. This argument of Kalidas Nag cannot stand close scrutiny. Emperors in ancient India gave absolute autonomy to their subordinate kingdoms - these subordinate kingdoms practically appeared to foreigners as independent kingdoms and the emperor also dealt with them as such. Even

granting that the situation was otherwise in the time of Chandra Gupta Maurya, a writer of general science of politics is not expected to take note of such passing features, for the normal political condition of India has always been one of numerous kingdoms which flourished side by side.

It is rather amusing to find many critics making much of the non-mention of Kautilya's name in the Indica of Megasthanes (32). It is too well known that what we know of the writings of Megasthanes is only in fragments and it is possible that a reference was made by Megasthanes to Kautilya in the other portions, the remains of which have not been as yet traced. Again it has to be observed that there was no reason for Megasthanes to mention Kautilya, as Kautilya himself had no occasion to mention Megasthanes. In fact if Megasthanes wanted to mention names, then his whole book would have been filled with names of high officers, for the administration of Chandra Gupta was a bureaucracy of a rigid type. It is even possible that Chanakya was not the minister of Chandra Gupta Maurya, once the latter was firmly on the throne and might have retired to his forest residence to write the Artha Shastra, for as Hermann Jacobi points out, it would have been impossible to write such a monumental document packed with wisdom without long rest and leisure. Again it has to be remembered that Megasthanes wrote only on hearsay evidence and readers of Miss Mayo's "Mother India" know what value can be attached to such evidence. In short, it is no use citing Megasthanes' Indica to question the date of Kautilya. But if scholars are anxious to use this doubtful piece of evidence, then we can observe that the similarities between Megasthanes and Kautilya are so many that they establish a contemporaneity of the two. In the Agronomoi and Astynomoi of Megasthanes we can easily see the district and town officials of Kautilya.

Prof. Wintermitz thinks that the very name gives doubts regarding its authorship, for the word 'Kautilya' means crooked. In the first place the very derivation of the word is doubtful. The author of Sabda Kalpadruma gives a different interpretation. It is possible that Kutala, Kotala and Kutila were

the original names from which Kautilya was derived. Even if it were granted that Chanakya was known as Kautilya, meaning 'crooked', there is nothing strange about it for we have in the Aitreya Brahmana a name like Sunakshepa which means 'dogs tail'. Kautilya himself mentions the names of Vata Vyadhi and Pisuna meaning rheumatism and slander. In South India particularly, even today, there are many names which have a bad connotation but yet are quite popular. Among such names are 'Koravan, Kattan, Pidari and Dasan'. This argument is therefore of no high value.

The style of Kautilya, says Bhandarkar (33), points to a later date. He says that Kautilya's style has a close similarity to the style of Vatsyayana, the author of Kama Sutra (34) and so it is argued that Kautilya's date must be near that of Vatsyayana whose date in turn is fixed some time in second century A.D. This argument is open to more objections than one. In the first place no body is certain about the date of Vatsyayana himself and if Vatsyayna himself is put in second century B.C. to suit the date of Kautilya according to our thesis, there is no unassailable argument against it. Unfortunately for purposes of establishing chronology, argument from style is of no use, nay, it may even lead to preposterous conclusions. In fact a play called 'Mattvilasa Prahasana' attributed to Mahendra Varman of 7th century A.D. has very close resemblance to the style of Bhasa who admittedly is earlier than Kalidas. Can we place Mahendra Varman along with Bhasa? It would be absurd and ridiculous to do so.

Kautilya, it is argued by some, exhibits a better knowledge of metallurgy and medicine than Patanjali, Nagarjuna and Susruta. So it is argued that Kautilya must be later than these people. Mercury is mentioned by Kautilya which according to P.C. Ray (35) cannot be carried back, beyond 6th century A.D. This argument is rather strange-why must they refer every treatise exhibiting an imperfect knowledge to an earlier period than one showing a more developed knowledge. In fact the author does not exhibit as much knowledge as Kautilya; on that score would it be fair to put Sukraniti earlier than Kautilya. As Kautilya refers to himself

in the third person some scholars think that Kautilya must have been the founder of a school. But this does not square with known facts. There is absolutely no reference in later literature to his having founded a school. Again the practice of an author mentioning his name has been handed down in India from remote antiquity and it obtains in India even today.

It seems clear from what has been said above that there is no reason to doubt that Kautilya was a contemporary of Chandra Gupta and lived some time around 320 B.C. Dr. Shama Sastri still holds the field.

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CHAPTER 3
MISCELLANEOUS SOURCES

Besides the Smriti and Shastra Literature, which we have been referring to so far, there are numerous minor works on law, which throw considerable light upon the subject of our discussion (1). Many of these however belong to a very late period in Indian history. Infact some of them could be traced to even the early part of the 19th century. These works are mostly commentaries, although one or two of them profess to be independent treatises on law (2). Kammandaka, the author of the famous Niti Sara, for example, only epitomizes the teachings of Kautilya (3). He gives in 36 chapters what Kautliya does in 180, but he arranges the topics in a more scientific manner; amplifies some sections on public policy and excludes those on law and administrative departments. Although it is not possible to exactly fix the date of Kammandaka there can be little difference of opinion when it is maintained that he was earlier than 7th century A.D. He is referred to by the poets Dandin and Bhavaboothi. Again, the Matsya Purana and Agni Purana quote profusely from his work. But the more difficult question, how far earlier, cannot be answered with the materials available at present.

Sukra Niti Sara

Another work of great importance belonging to medieval period is the Sukra Niti Sara (4)-a satisfactory edition of which was brought out by a professor of a Madras college in 1882. This treatise is easily the most remarkable work on government. Dr. Gustay Oppert, the editor of the text, concluded that the

work "belonged to the same period which produced the Smriti and the early epic literature". But not only do the spirit and atmosphere of the work point to a much later period, it specifically refers to guns and gunpowder. Even allowing for interpolation, Sukra Niti cannot be older than the 12th or 13th century A.D. like Yuktikalpataru (5). It is a loose, composite production treating a mass of miscellaneous matters. It borrows freely and extensively from its predecessors, for instance, from the Mahabharata, Manu and even Kammandaka, and thus indirectly from Kautilya. If Sukra Niti deserves particular notice, it is because it represents the last summing up of Hindu political thought and because it introduces a few novel features of minor importance.

Conscious, perhaps, that he had appeared on the scene rather late, the author of Sukra Niti is at pains to connect his handiwork with hoary antiquity. He repeats with slight modifications the Mahabharata version of the history of Dandaniti, which goes back to the beginnings of creation. He had elected to condense the version of Brahman because the life of man was too short. He conceives of politics as an art with a definite object. Dandaniti aims at the promotion of general prosperity. It conduces to the stability of the world. It is of course, particularly useful to rulers. A King, who neglects it, sinks like a leaky vessel. It need hardly be repeated that in Hindu speculation, politics is not clearly separated from the general science of society. Like other writers, Sukra has something to say on society as a whole. At one place he displays an extraordinary breadth and liberality of outlook. It is not birth but "virtues and works" which determine the rank of a person in the system of caste. Passing to politics, Sukra adopts the time-honoured theory that a state is an organism of "seven limbs". viz, the sovereign, the minister, the ally, the treasury, the territory, the fort and the army. It is significant that Sukra compares them to various parts of the human body.

Sukra devotes a large portion of his work to administration of justice. Though there is nothing new in his work, his treatment of the subject is more original and systematic. According to him "Offences are of four kinds: those

committed through the body, through speech, through the mind, through association". Each, again, may be two fold, known or 'approved'. Each head is further divided into four categories- temporary, constant, habitual and natural. But the broadest division is merely three fold-first, second and third, each supposed to be worse than the foregoing. In the determintation of punishment personal character should be taken into account. Men fall into three classes-first, second and third. Punishment itself may be divided into three grades- good, middling and low.

Sukra admits a large variety of fines but he lays down that financial motives should never inspire judicial administration. Imprisonment with "ignoble works" for one, three or six months or for a year, or for life is prescribed, but Sukra here seems to forbid capital punishment. The State has the right to expel murderers, cheats, atheists, adulterers, corrupt officers, sedition-mongers, prostitutes, of those who violate social conventions, sold their daughters off, injured their kith and kin. These and other miscreants "should be bound and transported to islands or forts, and employed in the work of repairing roads and made to live on insufficient and bad diet". Those who forsook their parents or wives and turned vagabonds should be bound in chains and set to repair roads. The administration of justice stands in the forefront of the duties of the State. The wicked must be punished. The people must be protected and their welfare must be actively promoted. Enemies must be destroyed. Their destruction means "the prevention of them from committing injuries". All cases must be decided according to Dharmasastras. The King's justice however must always respect local usage. Sukra expressly contemplates a case in which one would be punished for what would be no offense in another. But in no case is punishment to be arbitrary (6).

Trials should be held in public. The King should never try cases alone. He should sit with judges and brahmins. Judicial appointments should mostly go to Kshatriyas, but may also be conferred on Brahmanas or Vaisyas, well qualified, but not on Sudras. The principle of devolution and popular justice

is recognized. "The cultivators, the artisans, the artists, the usurers, corporators, the dancers, the ascetics and thieves should decide their disputes according to the usage of their guild, etc." So, too, the principle of jury had an ample scope. "The foresters are to be tried with the help of foresters, merchants by merchants, soldiers by soldiers" and in the village (affairs are to be administered) by persons who lived with both parties (ie. neighbours). But they are not to try cases of robbery or theft. The King should give no "decisive opinion in a dispute among brahmins regarding the interpretation of a procedure of sacrificial rituals".

Jatakas

The value of non legal literature to a study of administration of justice in ancient India is as great as legal literature. In fact the Jatakas (7) throw more light on the practical side of ancient Indian Judicature than the Smritis themselves. The Jatakas on which a portion of our work is based are a collection of stories included in the Khuddaka Nikaya of the Sutta-Pituka of the Poli Conan (8). These stories as edited by Fous Boll number 547. According to Singhalese tradition, the text of these Jatakas was first transmitted orally (9). It was only under the Sinhalese scheme, *vatagamini*, in the first century B.C. that they were committed to writing. Dr. Winternitz (10) thinks this is a sound view. Although the Jatakas are many they do not give us any definite clue regarding their origin or chronology. According to Gokuldas De, the Jatakas go back to the very time of Gautama Buddha if not earlier. In the words of Otto Franke, "The bulk of Jataka Gathas is the work of many, chiefly non-Buddhist authors, though one editor or compiler may in recasting the whole have altered and even added verses here and there". Dr. Winternitz has analyzed the different kinds and forms of narrative composition as represented in the Jataka collection: first, there are narratives in prose with fable verses, fairy tale stanzas, or aphorisms inserted here and there; secondly, there are ballads in dialogue form; thirdly, there are longer narratives; fourthly, there are collections of sayings on any subject and lastly, regular epics

and epic fragments. We have archeological evidence of unassailable character to establish the antiquity of the Jatakas. The Sanchi and Bharhut Stupas, which belong to second century B.C. represent several Jataka stories. Although we cannot say when exactly the Jatakas were composed, there can be no doubt about the fact that they represent a civilization definitely pre-Buddhistic (11). The light the Jatakas throw on administration of justice is about what existed between theory and practice. Instances are plenty to show that the good maxims of the Dharma Shastras were cast to the winds by some autocratic Kings and unscrupulous judges. The Jatakas also refer to certain punishments and procedure, which are not found in the purely legal literature. We have, for example, instances of persons being deprived of freedom for certain offences committed by them. The village Superintendent of Kulavaka Jataka who was accused of slandering the villagers before the King was condemned not only to lose his property but also his freedom. Again, although the Dharma Shastras claim immunity for brahmins from punishment, the Jatakas give us several instances of brahmins being executed. In one Jataka, we find a brahmin being flayed alive for stealing flowers from the royal garden. In another Jataka we have an instance of a substitute being executed for the real culprit. One day, the story goes, while standing at the upper window of her house a courtesan saw a robber, comely and gracious, being led along the road. The courtesan fell in love with him at first sight. She got the robber released by sending thousand panas as bribe to the city governor and a young merchant was executed as a substitute. Again we find the Jatakas telling us about the advice that the judges used to give to private individuals. In one Jataka we are told that a Vanna Dasi received a thousand panas from a youth who never visited her again. She for the sake of honour did not take even so much as a betel nut from another man. "Now I have grown poor, I cannot keep body and soul together", saying this she went to the Chief Justice who advised her to go to the former profession! We can multiply instances like this to show the extraordinary value of the Jatakas to a study of ancient Judicature.

The following citation from the Gathas of Tesakula Jatakas tell us about the maxims which the King was expected to keep in mind when administering justice :

"First of all, should a King put away
All falsehood and anger and scorn;
Let him do what a King has to do,
Or else to his vow be forsworn—
When a price in his rule growth slack
Untrue to his name and fame,
Should his wealth all at once disappear
Of that prince it is counted as shame .
In a man energetic and bold we delight
If from jealousy free...
To all, O great King, be a friend,
So that all may thy safety ensure
For courage as virtue he holds
And in it goodness true espies,
Be zealous to do what is right,
Nor, however reviled yield to sin,
Be earnest in efforts for good,
No sluggard can bliss ever win"
And again
"The matter, my friend is set forth
In a couple of maxims quite plain
to keep whatever one has
And whatever one has not, to gain
Take as counsellors men that are wise
Thy interests clearly to see
Not given riots and waste,
From gambling and drunkenness free
Such a one as can guard the right
And they treasure with all proper zeal
As a charioteer guides his car
He with skill steers the realm's common wheel.
Keep ever the folk well in hand
And duly take stock of how they feel
Never trust to another a loan or deposit
But act for thyself...

What is done or undone to thy profit and loss
It is well thou should know.
Ever blame the blame worthy.
And favour on them that deserve it bestow.
Thou thyself O great King shouldst instruct
Thy people in every good way
Lest thy realm and thy substance Should
fall to unrighteous officials, a prey. See
that nothing is done by thyself
Or others with overmuch speed.
For the fool that so acts
Without doubt will live to repent of the deed.
To wrath one should never give way,
For should it due bounds overflow
It will lead to ruin of Kings
And the proudest of houses lay low
Be sure that thou never as King
Thy people misled to their cost.
Lest all men and women alike
In an ocean of trouble be lost..."

Puranas

The value of the Puranas to a study of ancient Indian Judicature still remains unrecognized. It was H.H Wilson (12) who said rather unjustly that the Puranas were "pious frauds written for temporary purpose in subservience to sectarian imposture". Nobody today will subscribe to this view. The Puranas are a very important branch of the Hindu sacred literature. They enable us to know the true importance of the ethos and philosophy and religion of the Vedas. They clothe with flesh and blood the bony framework of the Dharma Sutras and the Dharma Shastras. Without such a tabernacle of flesh and bone, the mere life force of the Vedas cannot function with effect. It is, of course equally clear that without such life force the mere mass of flesh and bone will decay and crumble into dust. The Sthalapuranas are records relating to local shrines and describe local and limited manifestations of grace. The Puranas, on the other hand, relate to the whole of India

so far as the historical portion therein is concerned and to the whole world so far as their ethical, philosophical and religious portion is concerned (13), (14).

As regards the historical side of the Puranas many scholars attach little importance to it. But that is because they do not have sufficient patience to go deeply into the matter and investigate the historical facts in all the Puranas and correlate and co-ordinate them and then give a correct and coherent picture of the past of India therefrom. It is easy to dismiss them as a mass of legends and wax eloquent over the lack of the historical sense among the Hindus, whereas a patient and painstaking analysis followed by a systematic presentation of the Puranas is a very difficult task. But such a task has to be undertaken if the proper value of the Pruranas is to be correctly understood. Some writers in recent years have gone to the extent of saying that the Puranas do not teach history but are treatises on Yoga. Such a view is positively wrong; the Agni purana (15) for example, throws more light upon Ancient Indian Judicature than any other non-legal literature.

It is not possible to exhaust all the sources of information available for a study of Administration of Justice in Ancient India. The dramas of Basa, Kalidasa, Vishakadatta and Shudraka are of immense value to a study of the subject. Again the inscriptions of Asoka, Samudragupta, Karavela and others are also of great value. These are referred to whenever they are necessary in the course of the discussion. The aim of this chapter has been merely to show that apart from purely legal literature we have many documents of a non-legal character, which are equally important to a study of our subject (16, 17, 18) .

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In the Royal Court assessors and orders are admitted. So we have the involved statement that a Tribunal should consist of the Eight, limit of a Law suit- the King, the Judge, the Jurors, the Scriptures, the Astrologer, the clerk, gold, fire and water. Witnesses should belong to the same caste or social order as the party, which cites them. (CCLV2). See Beni Prasad: The State in Ancient India, page 332.

CHAPTER 4
SOURCES OF LAW

So far we have been speaking of the sources of information available for a study of the Administration of Justice in Ancient India. We can now pass on to consider those materials on which the Kings and other judges had themselves to rely in arriving at decisions in the disputes-criminal or civil-brought up before them for settlement. Before doing so it may be useful to know what exactly the ancients meant by the term Dharma. Dharma is one of those Sanskrit words that defy attempts at an exact rendering in English or for that matter in any other tongue (1). In the hymns of the Rigveda, the word appears to be used either as an adjective or as a noun and occurs at least 56 times (2). Yet we cannot say what exactly the ancient Hindus meant by Dharma but it was certainly far more than what the term 'Law' stands for today. The word itself is derived from the root 'Dhr' which means to uphold. So we can say that maintenance of Dharma meant keeping up values, traditions and customs.

The Smritikaras themselves give us an exhaustive list of the sources of law. According to Gautama (3), who might be taken to represent the earliest Sutra literature, Vedas were the source of Dharma and along with it he also mentioned traditional practice of those that knew the Vedas. According to Apastamba (4), law is what is unanimously approved in all countries by men of the Aryan society who have been properly obedient to the teachers, who are agents of subdued senses, neither given to avarice nor hypocrisy. Manu (5) lays down five different sources of Dharma.

The whole Veda is the foremost source of dharma and the next the tradition and the practice of those that know it (the Veda) and further the usages of virtuous men and self satisfaction. The use of the word self satisfaction is very significant for it might have meant that the judges in arriving at decisions were not expected to go against their conscience (6). Speaking of sources of law Yajnavalkya (7) declares that Vyavahara, the Veda, the Dharmastra, the Angas, the Puranas, the laws of the country, castes and kulas, which were not opposed to the sacred records were 'authority'. The term Vyavahara itself is defined by our law givers as "the act which helps to make clear the inexplicit violation of anon (Dharma) that has divided the contending parties in dispute or it is the proceeding of the plaintiff and the defendant involving testimony, possession and witness and aiming at the settlement of conflicting issues between the parties" (8).

Of the early lawgivers, Baudhayana (9) deals with the subject of sources of law more elaborately and more practically than any other. He begins by pointing out that there are three sources of law- the Vedas, Smritis and the practice of Shistas. Shistas themselves are described as those who are free from envy, pride, arrogance, greed, hypocrisy, anger and perplexity and are "content with a store of grain sufficient for ten days". They must also be well versed in the Vedas and auxiliary studies. They were expected to be able to draw inferences therefrom and be able to adduce proofs perceptible by the senses from the revealed texts. Failing the Shistas, points of law were to be decided by an assembly of ten comprising four scholars, each master of one of the four Vedas, a mamisska- a scholar acquainted with the Angas, a reciter of sacred law, and three brahmins belonging to three different orders. If such an assembly cannot be got together, the points may be suggested to five, three or a single blameless man, but not to a thousand fools. Manu also agrees with Baudhayana when he says that law is what is practiced and cherished at heart by the virtuous and the learned who are devoid of prejudices and passions. To Vashishta, law is nothing but the practice of the Shistas (10).

From the foregoing citations it is clear that the Smritis and Shastras were not so sacorosanct as they were often considered to be. In fact custom seemed to have influenced the decisions of the judges far more than any other factor. To Yajnavalkya (11) law is Sadachara- practices and conduct of good men. It is not a wonder it was so, for the laws themselves command obedience more as customs than as laws. A rule of conduct that, from one point of view, is a law, is in most cases, from another point of view, a custom; as Hegel remarks 'the valid laws of a nation, when written and collected, do not cease to be customs'. There are instances of laws that were never published, the knowledge and administration of which belonged to a privileged class and which were nevertheless respected and obeyed(12). And among ourselves the ordinary citizen stands in no need of studying the laws under which he lives, custom being generally the safe guiding star of his conduct. Custom, as Bacon said, is 'the principal magistrate of man's life', or, as the ancients put it 'the King of all men'.

Many laws were customs before they became laws. Ancient customs lie at the foundation of all Aryan law books(13). Mayne (14) is of the opinion, that Hindu law is based upon customs, which existed even prior to and independent of brahmanism. The Greek word for law means both custom and law, and this combination of meanings was not owing to poverty of language but to the deep-rooted idea of the Greek people that law is and ought to be, nothing more and nothing less than the outcome of national custom (15). A great part of the Roman law was founded on the *mores majorum*(16). In the Institute of Justinian, it is expressly said that "long prevailing customs, being sanctioned by the consent of those who use them, assume the nature of laws' (17). The case was similar with the ancient laws of the Teutons and the Irish.

Katyayana (18) maintains that custom is as important as the Veda and wants the judges to attach as much importance to custom as to the Veda. Brihaspati (19) mentions popular custom as one of the sources of substantive law: "where the decision is given in accordance with the custom of the country, reasoning and the counsel of the Naigamasti is

called Vyavahara." The Smritiratnakara (20) quotes the following passage from the Mahabharata to show that family usage often superseded express texts: "Oh. Bharata, since the percepts of the shastras are conflicting, in respect of all rites, as for instance a sacrifice is obtained (by some) after sunrise and (by others) before sun-rise, a wise man should follow the hereditary observances of his family. Oh! Mahabaho! such usage is superior to the commandments of all the shastras together". Again in support of the usage of the country, Devala is thus cited by the same authority: - "The usage of the country should first be attended to; that which is observed in the country should alone be observed. Wise men abstain from what is hated by the people; a wise man should go by the path of the people (i.e., follow popular usage). The deities, the Brahmas, the notions of purity, the kinds of earth, the water, and the religious observances of a country should not be ridiculed in that country, for that is the law of the country". The term Sadachara as custom is defined as one that has prevailed in a country through several generations in all classes. *(Chatur vinsati mata).*It is rather amusing therefore to find several scholars still holding the view that the Hindus were bound hand and foot by the rules of the Dharma Shastras. Even a casual glance at the Smritis themselves would make it clear that the writers of those Dharma Shastras never wanted the people to look upon the regulations as rigid. The very Smritis declared that Dharma changes with age (Parasara 1.22). Parasara echoes the same sentiment when he says that the Manusmriti was suitable for Krita age, Gautama for the Threta, Shakha-Likita for the Dwapara and Parasara for the Kali age. It is wrong to think that the Smritis controlled the customs and manners of the people. On the other hand, there is enough reason to think that they themselves instead of being the cause of our customs and manners were the consequences of our Sadachara. The Ashwalayan Grihyasutra while describing the marriage ceremonies very significantly observed that local customs should be followed even though they are not mentioned in the Sutras (21). That the Sadachara must have weighed on the judges more than the Smritis is also clear from the fact that no two Smritis agree entirely, while every

Smriti claims to be the most authoritative. As stated earlier, Brihaspati and Angirasa, for example, advance the view that a Smriti opposed to Manusmriti was to be discarded. Parasara claimed that his own Smriti is to be held authoritative in preference to all, while Gobila holds that in case of differences of opinion the view of the majority was to hold good. Baudhayana again describes elaborately the differences in the customs of the people of the North and the South and emphasized the need for respecting them (22).

Often there is a conflict among these sources and in such cases the judges had the discretion to choose that which was the best. The lawgivers however are not unanimous regarding the relative merits of these sources. Says Kautilya, 'Canon, judicial procedure, usage and royal edicts form the four fold basis of the subject of 'Litigation'. In these, what precedes overrides in the case of conflict, what follows. Among them truth is the foundation of Canon, testimony of procedure, general acceptance of usage and legal sanction of edicts. If the King governs in accordance with these four, he will conquer the earth to its four limits. Wherever usage and canon or the science of affairs and canon, conflict with each other, let the meaning be determined by reference to the canon but wherever the science is divided by conflict of equity and canonical precept, then the standard of authority is set by equity and any rule opposed to it loses its validity"(23).

With this view of Kautilya, Yajnavalkya and Narada do not agree. In fact instead of the wording 'preceding' Narada uses the word 'following' (24). Says Yajnavalkya (25), 'In the conflict of two canonical laws books (Smriti), the equity of affairs (Vyavahara) prevails. Further it is the rule that the science of canonical law (Dharma Shastra) is stronger than Artha Shastra". Such differences among Smriti-karas only make it clear that the King and the judges had ample discretion in making use of that source which was most suitable to the times (26).

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CHAPTER 5
JUSTICE - ANCIENT AND MODERN

"All lamps are not lamps- the lamp of truth is the lamp of the wise"(1). Justice and law are often considered identical and frequently our courts are called 'Courts of Justice'. A moment's reflection, however, reveals that the ends of law and the ends of justice are sometimes poles asunder. What is unjust need not necessarily be illegal and what is illegal need not necessarily be unjust. To deprive a man of the money that is due to him merely on the ground of limitation is unjust, but perfectly legal. To deprive a nation of its own language is certainly unjust, but not illegal. To watch a man about to be drowned without helping him is unjust, but yet not illegal. This conflict between justice and law was conspicuous by its absence in ancient India (2). In those days, justice was morality. Morality was law and law was truthfulness. Says the Brihadarayaka Upanishad, "If a man declares the law, they say he declares that is true, if a man declares that is true they say he declared the law" (3). To speak the truth was considered to be the greatest virtue. "If veracity and performance of a thousand horse sacrifice are weighed against each other, truth ranks even higher than a thousand horse sacrifice" (4). Baudhayana says (5) "The merit which thou hast acquired in the interval between the night in which thou was born and that in which thou wilt die, all that will go to the King, if thou speakest an untruth". But the question what is truth is answered in an interesting way by Tiruvalluvar, the author of Kural. He says (6), "If it is asked what it truth? It is the speaking of such words as are without the least degree of evil to other"."Even falsehood has the nature of truth, if it confers a benefit that is free from fault"(7). Justice was considered by

them as a Divine Revelation. The offender had to answer not merely the human judge in this world but also the Divine Judge in the next. Every offence was considered a sin. In the words of Baudhayana (8), "a witness who speaks falsely commits the sin of slaying three fathers and three grandfathers and seven descendants both born and unborn". Every offence, therefore, had two remedies-legal remedy and the divine remedy. The latter consisted in penances. Manu (9) lays down "Learn completely the penances by which all the several offences can be expiated". In fact, many daredevils avoided committing offence-because of the fear of Divine punishment. The judge was looked upon as a representative of God on earth (10). The moment the judge decided a case wrongly; he would be destroyed by his creator. Says Manu (11), "where justice is destroyed by injustice or truth by falsehood while the judges look on, then they shall also be destroyed. "Justice being violated, destroys; justice being preserved, preserves; therefore, justice must not be violated, lest violated justice destroys us"(12).

The position of the judge in ancient India was one of heavy responsibility. He had to fear not only the ultimate divine punishment, but also the immediate royal punishment. Every judge who decided wrongly was liable to a heavy fine; Says the Sukra Niti: (13) "Whoever, Amatya or chief judge, decided a case contrary to law, the King shall try it again, while the judge shall be fined a thousand".

Another point of difference is seen in the fact that the Dharma Shastra laid great emphasis upon the guilty being punished. It was a sin to allow a culprit to go free. In fact, while the modern principle of criminal law gives ample scope to the judge to let go the accused, the ancient Shastras gave the judge equal scope to punish him. "The benefit of the doubt should be given to the accused. It is better to leave ninety-nine guilty unpunished than to punish one that is guiltless", are the ruling maxims of modern justice (14). It is certainly true that the ancients erred on the side of severity; but it should be pointed out that they were ever anxious to know the truth. It

should not be thought that punishment was meted out indiscriminately. Manu says (15), "unjust punishment destroys reputation among men and fame after death and causes even in the next world loss of heaven; let him therefore beware of inflicting it." Again, "Let the King having fully ascertained the motive, the time and place of the offence cause punishment to fall on those who deserved it" (16). These verses make it clear that in spite of their anxiety to punish the guilty they did not forget the elements of justice. The point to be noted is that today, many are the judges who eagerly search for "DOUBT", to let off the accused while in ancient India such a thing would not be allowed. Every effort had to be made to fix the incidence of the guilt.

Punishment in ancient India was severe. It was based on the principle of an eye for an eye, a tooth for a tooth (17). "With whatever limb the thief in any way commits an offence, even of that the King shall deprive him"(18). The dread of the rod was so great that people very rarely committed offence. Some of the punishments, which were quite common in ancient India no longer exist. Even capital punishment was inflicted differently for different persons according to the gravity of the offence. A person who would be hanged if he had committed a simple murder would be impaled alive if the crime was committed under more terrible circumstances. How death was caused mattered most in deciding how the culprit was to die. We hear of even the dead body of a murderer being hanged if his death occurred due to any accident. Exposing to public censure was another punishment, which was quite common. It often consisted in branding on the offender's forehead some symbol indicative of the crime (19).

Civil and criminal justice were not rigidly separated. Kautilya(20) in his Artha Shastra speaks of two courts, that is, the Dharmasthaney and Kantaka Sodhna. We find both these courts had civil and criminal jurisdiction. Brihaspati(21) calls the court a four-faced brahmin. More striking is the definition of Sukra (22). "A court of justice is a place where the sciences of practical life in the varied interests of the men are enquired

into and decided according to the dictates of the Dharma Shastras".

In the Mrichhakatika, (23), Sudraka opens with the statement that the officers of the court cared nothing for family or descent, but were guided entirely by the merits of the case.

The courts of ancient India were of two kinds - Popular Courts and State Courts. Today we have only the latter type of courts. In those days it was the popular courts that were always busy. The Puga, the Sreni, the Kula were the three important arbitration courts. In the State courts there was always more than one judge; in fact, Visalakha lays down, "no deliberation made by a single person will be successful". Brihaspati is of the opinion that the number of judges should be at least five, while Manu favours three. In south India, we hear of a separate committee sitting for judgment (Utteramaerur inscription). There can be hardly any doubt regarding the superiority of this system over ours in which the fortunes of many are decided by a single individual.

Our ancients had greater opportunities for appeal than we have. Any person could start his case in any of the lowest courts and go on appealing till he reaches the King's court. In the Sakya Republic (24), a person if he was convicted, had the right to appeal from the Matras to the Vinicya Matras, from them to the Sutradaras, and then to the Astakulaka, the Senapathis and finally to the King. They had not only the option of appeal but also the right to start the case anywhere they liked. In south India, we have an instance of this option in the reign of Karikala when two parties to a dispute agreed to launch the case elsewhere on account of the youth of Karikala (Sirupancha Mulam)(25).

Offenders were generally caught by the spies who played a very conspicuous part in ancient India. "Let a King consider as his eyes these two things, a spy and a book of laws universally esteemed"(26). Never was there a time in the history of the world when espionage did not play a prominent part. Acts of espionage are recorded in the Bible and by classical authors such as Xenophon and Caesar (27). The spies are

referred to even in the Rig Veda. "Varuna (28), wearing golden mail, hath clad himself in shining robe, his spies are seated round about". The spies helped the King by bringing before him the offenders who were corrupt, and those who were slack in the discharge of their functions (29). The spies seem to have been present even in the courts of justice. There was hardly a place where they were not present. It should however be pointed out that the King was not allowed to pass his sentences relying on the evidence of a single spy. Says the Kural, "Let a King employ spies so that one may have no knowledge of the other; and when the information of the three agrees together, let him receive it"(30).

Next only in importance to the spies was the police. They took cognizance of all offenders, irrespective of their seriousness. Their functions were two-fold: prevention of the commission of offences and bringing of the offenders to justice. They kept an eye on all suspicious characters. The heavy responsibility that lay on the police is clearly seen in the fact that if any theft occurred and the policeman did not take note of it, he was to make good the loss (31). Gautama lays down, "Having recovered property stolen by thieves he shall return it to the owner. But if the property is not recovered, he shall pay it out of his own purse"(32).Shershah(33), the Afghan ruler of India, enforced this principle. The Mukkadams were compelled to trace the thieves and robbers. In cases of murder, the Mukkadam of the village was hanged if the culprit was not found, for it had been generally ascertained that thefts and highway robberies can only take place with the connivance of these headmen. The Tarikh-I-Daudi mentions two instances-the theft of a horse from the Sultan's camp at Thaneswar and a murder near Etawa. This provision may look severe and certainly troublesome to the police-but it appears to have served public cause very well. We have the testimony of Megasthanes(34) who says that nobody locked his house. Means of communication being scarce, there was little or no facility for the thieves to move far away form the village. In murder cases, a system of collective responsibility was enforced on villagers and townsmen. But the police were looked upon

with great respect by all the courts. In fact, while today, as Sir Cecil Welsh says, "the Indian judges view with distrust the work of the subordinate magistrates and the police, it was the very reverse in those days. This is certainly a bad principle of judicial guidance"(35). Private persons had the right to arrest suspected ones and bring them before the court.

Great importance was attached to evidence both in civil and criminal cases. Proofs were divided into "human (Manu Shika) and Divine (Daivika)"(36). The latter kind of proofs is peculiar to ancient India. The judges were expected to seek the help of the divine witness only when there was no human proof. Under such circumstances, the judges made use of the ordeals. It was by this that they called the universal witness to express his opinion. It is however, wrong to think, that they relied too much on the ordeals. In fact, Gautama, Baudhayana and Vasishta are quite silent about the ordeals, while Katyayana (37) declares that, where, of two parties one gives Divine proof and the other human proof, the latter should be accepted in preference to the former. Manu (38) describes the administration of oath more elaborately than ordeals. "Let the judge cause a brahmin to swear by his veracity, a kshatriya by his chariot or the animal he rides on and by his weapons, a vaisya by his kin, grain and gold, and sudra by imprecating on his own head the guilt of all grievous offences". There were two kinds of ordeals- ordeal by fire and ordeal by water. Narada, (39), however mentions five: - ordeal by balance, ordeal by water, ordeal by poison, ordeal by fire and ordeal by drinking water. These were resorted to mostly for offences committed in secret (Sahasa.)

Human proofs were of two kinds-documentary and oral: Brihaspati however speaks of three kinds of human evidence-witness, writings and inferences. The same is echoed in the Periapuranam. The importance of the document is clear from the case of Sundara Vs. Siva detailed in the Periapuranam(40).

The witnesses were more important than documents. They appear to have been more respectable and honest than their representatives today. Every Smriti urges upon them to speak the truth (41).

"A false witness", says Vishnu (42), "falls headlong into hell". Says he, "A false witness may be known by his altered looks, by his countenance changing colour and his talk wandering from the subjects". It is certainly unfortunate that there should be such moral downfall today for hardly is there a judge who has not had to hear false stories from witnesses at one time or another. We turn with great relief to the witness in ancient India. A false witness had to face the odium of society, the punishment of the King and the danger of his suffering in hell. As the courts were held in his own village, there was very little chance of his escaping from social ostracism, if he spoke anything that was false. There are as many facilities for giving false evidence today, as there were checks against it in ancient India. The Kural (43) also says "He who speaks the truth with all his heart, is superior to those who make gifts and practice austerities".

The tedious cross examination of the lawyers, the protracted trial and the long distance of the court from his own place, the example of his brother witnesses, the lack of moral fear have led to the tragic fall of a nation which once held up the ideal of Harischandra (44).

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CHAPTER 6
COURTS OF JUSTICE IN ANCIENT INDIA

Section (3) of the Law of Evidence defines a court as follows: "Court includes all judges and magistrates and all persons, except arbitrators, legally authorized to take evidence"(1). This definition contained in the Indian Evidence Act today could as well be applied to ancient Indian codes, with the difference that in the term 'court' the ancient law givers included the arbitrators also. "A court of justice, says Sukra, "is a place where the science of practical life in the varied interests of man are enquired into and decided according to the dictates of the Dharma Shastras"(2). Speaking of the same, Narada (3) observes, "that is not a judicial assembly where there are no elders; they are not elders who do not pass a just sentence. That is not a just sentence in which there is no truth. That is not truth which is vitiated by errors". Apastamba (4) defines a court of justice as that place where discrimination between truth and falsehood conformably to the precepts of law is made. Sudraka (5) in his 'Mrichhakatika' gives a graphic description of a court of justice. Charudatta, the hero of the drama is made to say, "it resembles with its cruel agencies an ocean in itself with all its murderous and cruel elements. The counsellors deep in thought are its waters, the envious constitute its billows and conches and the spies that stand out are its sharks and crocodiles. It is the abode of elephants, horses and other murderous animals. It is crowded with storks, litigating parties that make noise in different ways. It is the resort of serpents in the guise of scribes and its banks are trodden smooth by science of politics." That this is not an exaggeration of Sudraka is clear from a reference to courthouse in the Rajavada jataka (6) where we are told that the courts

were normally heavily crowded. This makes us realize that the courts were exceedingly busy with numerous litigating parties waiting outside the court. Charudatta being accused has several bad things to say about the court. We will not be justified in coming to conclusion regarding the court from his observations but they indicate what the accused thought of them.

The Smritis leave much to be imagined regarding the location, building and other equipments of the court. It is no wonder the Smritis are silent, for very often the courts were conducted near the scene of occurrence under a banyan tree or in a temple. The village panchayats usually met inside a local temple; the religious awe it inspired was often responsible for making many people speak the truth. Some times if a holy place was nearby, the panchas and the parties used to assemble there. Even a King would prefer a thirtha or a holy place to his grand and comfortable court hall; thus when King Sahu took up the case of Supe Watan for decision, he ordered the parties and the Panchas to assemble at Mahuri a holy place three miles from Satara, and not at his court in the capital (7). The South Indian records give several instances of judicial proceedings being conducted inside a temple. The Sabhas of Cholas (8) for example, more often than not met where were discussed almost all problems of national importance. The Jatakas again speak of Gautama deciding disputes among the monks under the shade of huge banyan tree (9). In fact we could say that the Kings and judges constituted courts wherever they were. It was always open to the wronged or the injured party to approach the King at any time he liked and wherever the King was. This easy accessibility of the King to his subjects for purposes of giving justice was a very important feature of ancient Indian Judicature and the Kings appear to have vied with one another in putting into practice this supreme maxim of administering justice. The remarkable progress that India had attained in those days would be clear from the following account of the despotism and tyranny of the Persian monarchs. "Since lesser Kings were vassal to him, the Persian ruler entitled himself "King of Kings", and the ancient world made no protest

against his claim; the Greeks called him simply Basileus the King. His power was theoretically absolute; he could kill with a word, without trial or reason given after the manner of some very modern dictator, and occasionally he delegated to his mother or his chief wife this privilege of capricious slaughter. Few even of the greatest nobles dared offer any criticism or rebuke and public opinion was cautiously impotent. The father whose innocent son had been shot before his eyes by the King merely complimented the monarch on his excellent archery; offenders bastinadoed by the royal order thanked His Majesty for keeping them in mind. The King might rule as well as reign, if, like Cyrus and the first Darius, he cared to bestir himself, but the later monarchs delegated most of the cares of Government to noble subordinated or imperial eunuchs and spent their time at love, dice or the chase. The court was overrun with eunuchs who from their coigns of vantage as guards of the harem and pedagogues to the princes stewed a poisonous brew of intrigue in every reign. The King had the right to choose his successor from among his sons, but ordinarily the succession was determined by assassination and revolution"(10).

Separate building for courts however did exist in the capital and in other important centers and the Smritis themselves throw a good deal of light, though not directly, on the location and equipment of the courts. Says Brihaspati (11), "In the middle of the fortress, he should build a house with water and trees adjacent to it. Let him use for a court of justice a room situated on the eastern side of it properly constituted and facing the east, the judges facing the north and the scribe facing the south. The King should cause gold, water and codes of sacred law to be placed in the midst of them". Kautilya (12) gives detailed instructions regarding the construction of the courthouse. Says he, "the court (Dharmasthiya) and the office of the ministers (Mahamantriya) shall be built in a separate locality provided with separate accommodation for men and women kept apart and with many compartments well guarded, a jail also shall be constructed. All these buildings shall be provided with halls, pits, watery well, bath room, remedies against fire and poison, with cats, mongooses and

with necessary means to worship the guardian Gods appropriate to each". The cats and mongoose were there probably to prevent disturbance arising on account of rats and snakes. According to Kautilya the chief court was in Secretariat buildings; but Kautilya makes it clear that the court had a separate block of its own. A hall of law built by Pasenadi for Gautama was called Sadhama Mahasala. It is of great interest to note that the court buildings in those days were decorated with various pictures and plants and statues. The jatakas while describing a hall of justice refer to numerous pictures on the walls-indeed a happy contrast to what obtains in our courts today. It would be interesting and also instructive in this connection to observe the lifelike and realistic court scene of those days represented on a medallion at Bharhut. The scene itself is taken from one of the Jatakas (Jataka No.546). Foucher (13) writes as follows: "Amara, the virtuous wife, whose husband is absent has four suitors to whom she assigns interviews for each of the watches of the same night and it is also in great esparto baskets that she causes her tricked lovers to be packed by her servants. At the moment chosen by the sculptor, we are in the midst of the court; the King is seated on the throne, surrounded by his ministers and at his right side one of the women of the harem is waving a fly flapper. Amara is standing on the other side with her left hand on the shoulder of her attendant, and at her orders the lovers in three of the baskets have already been raised and the heads of three delinquents uncovered while two coolies bring the fourth".

In addition to decorations, according to Brihaspati, there were images of Gods, which were supposed to watch the proceedings in the court. There was also the sacred fire. In short, a court was looked upon as sacred as a Hindu house with its Gods and sacred fire. Fire probably indicated constant life 'never for a moment deserted'. There was also another curious symbolism-seed gems. K.P.Jayaswal (14) thinks that this referred to ordeals. It is more probable that this symbolized the fact that justice was the foundation of everything. Almost all the law books were also ready for reference within the premises of the court. Brihaspati (15) speaks of a throne being

placed in the centre of the court "furnished with garlands and with a throne supplied with grain decorated with jewel, adorned with statues, pictures and images of deities and provided with fire and water." This was not occupied by the judge, for there was always another seat for the judge just below the throne. The throne might symbolize the presence of God as a presiding judge although K.P.Jayaswal takes it to refer to the presence of the King who was theoretically the president of all courts. Several seats were provided inside the court probably for the lawyers and visitors to sit. In Mrichhakatika we are told that seats were provided for everybody and that there was a special servant whose duty it was to sweep the court and arrange the seats in order, before the arrival of the judges. Sakra entering the court observes- "the seats are well arranged". The court was always open to the public and the courthouse was expected to have four doorways. In fact the court itself is referred to as Chaturmuka Brahma. Apastamba (16) defines a court as one, which can be seen through from one side to the other. Sukra (17) makes it clear when he says that no case should be tried *in camera.*

Though the King and the judges were always available to the people, there must have been certain regulated working hours for the court. Sukra (18) gives a vague hint when he says "the King should administer 'Nyaya' in the noon and Smriti in the morning". Thus morning was the time for adjudicating cases, which involved the application of the social and religious regulations, laid down in the Smritis and afternoon was fixed for cases, which involved the breach of the laws made by the King. This means that the courts in Ancient India sat between 11 am and 5 pm, for the courts were concerned more with the King made laws than God made laws contained in the Smritis. Social disputes which were not of a judicial nature were evidently decided in the morning, outside the court hall, possibly before the King or a caste panchayat. In this we may draw the attention of the readers to the following in one of the Jatakas (19): The King while appointing a man to judge-ship gives the following directions as to the time and the way in which he should spend his daily

routine. "It will be to the advantage of the people if you decide cases, but go at early dawn to the place of judgment and decide four cases and return... and partaking of food, decide four cases". In this way he was required to decide eight cases per day. This arrangement was apparently made for the convenience of an officer whose time was mostly occupied in spiritual work and we have reason to believe here and elsewhere that the court sat the whole day from morning to sun set, after which all business was to stop. The court remained closed for four days in a month-the 14th and 15th of dark fortnight, the full moon day and the following 8th of the month.

Inside the court were several officials besides the judges; each busy attending to his own allotted work. According to Brihaspati (20), the highest tribunal of the land consisted of the following ten members. 'The King, his chosen representative (the chief judge), the judges, the law (Smriti), the accountant and scribe, gold, fire, water and the King's own officer. Sukra (21) agrees with Brihaspati when he says, 'the ten requirements in the administration of justice are the King, officers, councilors, Smriti sastras, accountant, clerk, gold, fire, water and one's own men. In Mrichhakatika (22) we are told that a horse also formed part of the equipment of the court. This was perhaps to send a word to a witness who was required urgently in the court. In the South Indian epic "Shilappadikaram", we are told of a statue in every court. 'Further there was the place (Pavai Manram) where stood the statue which would never open its mouth but would weep, shedding tears on every occasion when there was deviation from the path of justice by the King or when partiality was shown in his court of justice by wrong interpretation of the law' (23). Among these (excepting the King and the judges about whom we will speak later) the accountant (Ganaka) occupied a very high position. His work was considered to be of great importance. Brihaspati (24) lays down that an aspirant for the post of an accountant was to be well versed in grammar, reckoning and numerous scripts. "Two persons thoroughly familiar with grammar and vocabulary, skilled in the art of computation, honest and acquainted with various modes of writing, should be appointed

by the King as accountant and scribe respectively". Again says Sukra (25), "the accountant and the clerk are to be versed in lexicon and the significance of words, well up in accounts, honest and trained in the use of various alphabets". Katyayana (26) shrewdly enough lays down that these were to be selected from the vaisyas. Vyasa (27) insists upon an accountant being well versed in astronomy too. It was the duty of the accountant to calculate the fine and credit it to the State treasury after receiving it. Speaking of the ten requirements, Brihaspati (28) observes "the chief judge decides cases; the King inflicts punishments; the judges investigate the merits of the case; the law furnishes the decree whether victory or defeat; gold and fire serve the purpose of administering ordeals; water is required for persons suffering from thirst or hunger; the accountant should compute the sum in dispute, the scribe should record the proceedings; the King's own officer should compel the attendance of the defendant, assessors and witnesses. And he should constantly keep both the plaintiff and defendant in custody if they have given no sureties. Of the members of a court of justice, the King is the head; the chief judge is the mouth. The judges are both arms, the law is both hands; the accountant and the scribe are the legs; gold, fire and water are the eyes and the heart; and the King's own officer is the feet".

The South Indian inscriptions give us more details about the accountant and his work. Besides the qualifications mentioned above; the Ganaka or the Kanakkan of South India was expected to have some judicial talent. He is referred to in one of the Chola inscriptions (29) as 'Trairajya Ghatika Madhyasta'. He received for maintenance four *nali* of paddy every day and seven *Kalanju* of pure gold every year and a pair of cloth. In presenting his accounts at the end of the year, he was required to undergo the ordeal of holding red-hot iron in his hand. Besides the ten members enumerated above, there were one or two more assistants about whom references constantly occur. One such was Sadyapala or summoner. He was always chosen from among the Sudras. Says Vyasa, "A stout sudra whose ancestors were employed in that office

acting under the orders of the judges, should be made Sadyapala to obtain material for the trial. A veracious man, who pays obeisance to the judges, should be appointed by the King as his own officer to summon and to keep in custody the witnesses, plaintiff and defendant" (30). These several members of the court persisted even in the Mughal period for we hear of the following officers in the Mughal courts of justice (31): Experts in canon law (Hazis), judges of common law (Adils), theologicians (Ulemas), jurists learned in precedents (Fatawah), the superintendent of the law court (Darogha-I-adalat) and the city police officer (Kotwal).

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CHAPTER 7
THE STATE COURTS

There were several kinds of courts in ancient India with different powers and jurisdiction. Bhrigu(1) speaks of as many as fifteen courts while Brihaspati speaks of four. According to Brihaspati the courts in ancient India could be classified as under: Movable Courts, Stationery Courts, Courts deriving authority from the King, Courts presided over by the King himself.

A stationery court meets in a town or a village; one not stationery is called movable; one furnished by the King's signet ring is superintended by the chief judge; one directed by the King is held in King's presence"(2). These could be classified for our purposes as State courts and Popular courts.Among State courts the most important were the courts of the Royal Bench, the court of the Pradvivka and the court of subordinate judges. Among the Popular Courts were the Kula, the Sreni and the Puga.The courts in ancient India cannot be classified as Civil and Criminal, for most of them had both criminal and civil jurisdiction. Kautilya (3) classifies the courts as Dharmasthiya and Kantaka Sodhana. The Dharmasthiya courts were made up of three judges and had power to inflict light fines. The cases involving validity of contracts, relation between master and servant, defamation, boundary disputes, damage to agriculture, pasture and public roads, duties of man and wife, inheritance, succession etc. fell within the jurisdiction of these courts. The Kantak Sodhana courts were likewise made up of three juries. They had power to inflict heavy fines and capital punishments; within their jurisdiction came the suits relating to protection of artisans, merchants and peasants,

measures against national calamities; robbery, mutilation of limbs, postmortem examination etc. The courts of ancient India can also be classified according to their territorial jurisdiction. "Such courts were of six ranks (4). First there were courts at every small town "forming the head quarters of village". The next higher tribunals were the courts at every small town which was the head quarters of 400 villages. Next came those at every town which was the headquarters of 800 villages. The courts at places centrally situated between every two provinces of the empire and the tribunals at Pataliputra, the capital, constituted the next two rungs of the judicial ladder. Finally came the keystone of the whole system, the highest court of judicature at the capital with the Emperor/King presiding in person over an assembly of judges (5).

King's Court

The highest court was the court of the Royal Bench presided over by the King himself. Students of ancient Indian polity know more than anybody else that the King was the very fulcrum of all activities in ancient India. Says Gautama, "that even Vedic studies were interrupted when there was no King on the throne". The same idea is repeated by Kautilya (6) when he says that the King's safety was identical with the safety of the people. (Kautilya Book 1,19). In fact the King was considered to be the maker of the age. Says the Mahabharata (7), "whether it is the King that makes the age or it is the age that makes the King, is a question about which there should not be entertained the slightest doubt-when the King rules with a complete and strict reliance on the science of chastisement the foremost of ages called Krita is said to set in; when the King relies upon only 3/4 of the science of chastisement leaving out a fourth the age called Treta sets in; when the King observes the great science by half Dwapara sets in; when the King gives up the science totally, Kali sets in. 'Thus to the King no duty was more important than that of administering even handed justice. Dandaniti, as this function was called, was considered to be the foundation of the State. Speaking of Dandaniti says the Mahabharata (8), "The man armed with the rod of

chastisement governs all subjects and protects them. The rod of chastisement is awake when all else is asleep. For this, the wise have characterized the rod of chastisement to be righteousness itself. The rod of chastisement protects righteousness and profit. It protects pleasure also, O King! For this the rod of chastisement is identified with the triple objects of life. Corn and wealth are protected by the rod of chastisement. Knowing this, O thou that are possessed of learning, take up the rod of chastisement and observe the course of the world. One class of sinful men desist from sin through fear of the rod of chastisement in the King's hands. Another class desist from similar acts through fear of Yama's rod, and yet another from fear of the next world.Another class of persons desist from sinful acts through fear of society. Thus O King, in this world, whose course is such, everything is dependent on the rod of chastisement. If the rod of chastisement did not protect the people they would have sunk and have disappeared. If chastisement did not uphold and protect, people could never duly perform annual sacrifices with large presents. If chastisement did not uphold and protect, neither camels nor men nor horses nor mules nor asses would even if yoked thereto drag cars and carriages. Upon chastisement depend all creatures. The learned therefore say that chastisement is the root of everything. If the rod of chastisement be not uplifted, the dog will lick the sacrificial butter". Again, "everyone in this world is kept straight by chastisement...If chastisement did not uphold and protect, then nobody would have studied the Vedas, nobody would have milked a milch cow and no maiden would have married. If chastisement did not uphold and protect, then ravage and confusion would have set in on every side and all barriers would have been swept away and the idea of property would collapse". Dandaniti is a means to make acquisitions, to keep them secure, to improve them and to distribute among the deserving the profits of improvements. It is on this science of Government that the course of the progress of the world depends. Dandaniti is the means of acquiring what is not gained, protecting what is gained, increasing what is protected and bestowing the surplus upon the deserving.

Again says the Mahabharata, when the King affords protection, the peoples sleep with the doors of their houses unbarred; the women decked with all ornaments and unguarded by males fearlessly walk about the streets; the people practice virtue instead of harming one another; the three classes perform sacrifices of various kinds; the science of agriculture and trade which is the root of this world exists in good order. It is no wonder that Usanasa (9) goes so far as to say that Dandaniti was the only science fit to be so called as the operation of all other sciences depended on it. So the Kings vied with one another in administering proper justice. Of Janaka it is said "King Janaka punished him that is wicked, even if he be his own son; but never doth he inflict pain on him that is virtuous"(10). Says the Ramayana, "the tears of those who have been falsely charged with any offence, destroy the sons as well as the cattle of a ruler who minds his own comforts only". The story (11) of a dog presenting itself for justice at the court of Rama and Rama granting its request illustrates how extremely anxious Kings in ancient India were to render even handed justice to all beings. "If the King who is easily accessible to his citizens and acts in accordance with the established law of the land, would but desire, rains will instantaneously pour in" (12). In the legend of Vikramaditya we have a story in which Vikramaditya is said to have risen up in the dead of night to enquire into the wailing of a woman (13). The Jatakas (14) give us several instances of the King's solicitude to do justice to the people. The King of Benaras was always on the alert to know his own faults. He used to wander about in the city in disguise but none told him anything against him. Once he went outside the city to know whether there was anyone who might say anything against him. At this time the King of Kosala who ruled with righteousness started out to find out his faults from persons outside the city. On the way the two Kings met, the road was very narrow. There was no room for one carriage to pass the other. Each of the drivers spoke of the virtue of his King; the King of Kosala and his driver descended from the carriage, loosened the horses and moved the carriage out of the way of the King of Benaras. We are told of a King (Uchala) in Kalhana's Raja Tarangini (15)

who was prepared to sacrifice his very life for the sake of his wronged subjects. "If an outcry against prosecution arose owing to the evil action of an official, the indignant King assuaged it by laments of the relatives of that official. He moved about unattended on horseback and whenever he heard any criticism by the people who had failed to recognize the sovereign, he soon rid himself of it. The tenderhearted King, says Kalhana, weaned even burglars from their occupation of theft and by appointing them guardians of the treasury made them lead blameless lives. Of Chandragupta, Kalhana says, "From fear of what was unlawful in a doubtful point of view he was prepared to give up even his own interest, like Garuda his wing, through fear of Indra"(16). Several instances can be cited from Kalhana's Raja Tarangini to show the extraordinary interest the Kings took in administering even-handed justice. On one occasion, says Kalhana (17), when the King had finished his day's work and when he was about to take his food the usher announced the waiting of a brahmin who was prepared to give his life by fasting if his case was not heard. The brahmin was called in and he began: "A hundred gold coins which I had earned by wandering in other lands I brought with me, on hearing of its good government, to my own country, I returned. When I was sleeping near a well the money fastened in a purse fell into the water of the well unnoticed owing to the twining creepers.....An energetic man willing to take the risk said to me "If I can restore the money to thee what whilst thou give me?" To him I replied, "helpless as I am how can I pose as the owner of the sum. You may give me out of the money anything that pleases you". He came out and gave me only two pieces retaining 98 for himself. I, who have been deprived of livelihood by fraud on account of the sincerity of a polite expression shall give up my life at your door since you have been a mal-administrartor". When asked by the King for the name and status of that man he replied that he knew him only by the face. "In the morning I shall help in securing what is desired". In this way the King having promised, induced him to take his food by his own side. Next day the man was sent for and the King having taken his seat in the court declared that out of the coins the brahmin was

entitled to 98 while the remaining two to the other man. To those who asked questions he announced, 'difficult to conceive is the course of the high character of justice when it is rushing to destroy injustice which is rampant. Though difficult to preserve, justice remains ever close to injustice and attacks it swiftly as fire attacks fuel wood". Thus by a close scrutiny of this and other cases he who knew how to distinguish between justice and injustice, being devoted to administration ushered the dawn of the Krita age. Thus the Kings in ancient India must have been exceedingly busy.

The duties of the King, according to the Mahabharata were: (1) to please the people;(2) to protect them; (3) always to seek their welfare;(4) to establish all his subjects in the observance of their respective duties; (5) to punish wrongdoers; and (6) to practice the virtues of promptitude, energy, truthfulness, self restraint, humility, righteousness, fortitude and compassion. The following passage, which occurs in the Milindapanha (18), also gives us an idea of what the people thought to be the duties of the King. It runs thus: "The sovereign overlord gains the favour of the people by the four elements of popularity (viz.liberality, affability, justice and impartiality). The sovereign overlord allows no robber band to form in his realm, travels through the whole world even to its own boundary, examining into the evil and the good-is completely provided with protection both within and without".

The King's court was the highest court of appeal in judicial matters, the King's voice was final and some times he could even come to a final decision without consulting his ministers. Says Kalhana(19), 'The King was not guided by the ministers, he himself instructed them in the right policy-diamond is not cut by any of them-it however cuts other precious stones' (20). The King also had summary powers. We have several instances of the Kings ordering men to be hanged simply because they crossed the royal road or in any way insulted the royal authority. These instances apart, the Kings are generally expected to decide all cases with the help of other judges. In fact to the ancients the exercise of any judicial power

by a single man was repugnant. Says Vishalaksha(21), 'no deliberation made by a single man will be successful". But the King's influence was considerable in arriving at decisions. Says Brihaspati (22) that it was the function of the King to decide whether the case before him was true or not. Says Sukra (23), "the King should attentively look after law suits by freeing himself from anger and greed according to the dictates of Dharma Shastras-in the company of the chief justice, Amtya, Brahman and priest. He should never singly try the case of two parties and hear their statement".

In the ancient south also, the position and the responsibility of the King were the same. According to the author of the Kural, failure to administer proper justice meant death to the King. (24).'Search out, to no one favour show, with heart that justice loves consult, then act; this is the rule that right approves.

'Hard of access, not searching out, with partial hand, the King who rules shall sink and perish from the land.'Thus it is impossible to exaggerate the importance of the King in ancient Indian judiciary. As Sukra puts it, as the wife of Indra is never a widow, so even righteous people cannot survive for a moment without a King. Vashishta (25) goes so far as to say that no action for debts could be taken and no interest allowed therein during the interval between the demise of a King and enthronement of his successor (perhaps because no such claims can be established judicially).

Though the King's court was the highest court of appeal, it had also original jurisdiction. As pointed out earlier, justice was not delayed by formal regulations. If a man was injured near the palace, he had every right to proceed directly to the King and report the matter. No judge could say that a particular case is being tried by him. In fact in Karikala's time, as stated earlier, we have the incident of two brahmins withdrawing their case from the King's court on the ground he was too young and inexperienced to try cases (26).

Court of Chief Judge

Next in importance to the Royal Bench was the court presided over by the Chief Judge. While the King's court could be held wherever he was, this court was stationery (27). Says Manu (28), "If the King does not personally investigate the suits, then let him appoint a learned brahmin to try them," The Pradvivaka naturally occupied a very high position (29). As an experienced surgeon extracts a dart by means of surgical instruments, even so the Chief Judge must extract the dart of iniquity from the law suit. He was also assisted by other judges and also assessors. Generally the King delegated his authority to the Pradvivaka by handing over to him the royal seal. We are not sure whether there was any appeal to the King from the court of Pradvivaka. But seeing the extreme indulgence given to the accused in the matter of appeals, it is likely, is was allowed now and then from his court.

Other Courts

Below the court of Pradvivaka there were many other courts with limited jurisdiction. These were known as Janapada, Sandhi, Sangrahana, Dronamukha and Sathaniya (30). Every one of these was presided over by more than one judge. These courts would resemble the modern Munsiff, Magistrtate courts. In addition to these, Kautilya (31) speaks of separate administrative courts to go into the conduct of officials on the lines of the French Administrative courts of today. It is not necessary to deal with these courts elaborately, for their functions were more or less similar to the functions of the court of Pradvivaka already explained. But the judgments of these of these courts were always liable to be reversed by the next higher court (32).

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CHAPTER 8
THE POPULAR COURTS

More important than the state courts were the popular courts, which were numerous in strength and varied in kind. A major portion of the judicial work in those days was done by these people's courts (1). The history of these courts can be carried back to the Rig Vedic period (2). In those days they were known as the Sabhas. That the Sabhas of the Rig Vedic period exercised judicial functions is proved by numerous references in the Rig Veda. Thus Ludwig infers it from the word Kilvishasprit in R.V.X-71-10 for the word can only mean 'that which removes the stain attaching to a person by means of accusation'. The fact that 'subhaara' is one of the victims at the Purushamedh sacrifice also leads to the same conclusion. For, as Macdonell observes, "as he is dedicated to Dharma, 'justice', it is difficult not to see in him a member of the Sabha as a law court, perhaps as one of those who sit to decide cases". Macdonell also takes 'Sabasad' to refer to the assessors who as Sabasads, perhaps the heads of families, were expected to be present at the Sabha oftener than the ordinary man; the meetings of the assembly for justice may have been more frequent than for general discussion and decision. It is also possible as Macdonell suggests, that the judicial functions were exercised, not by the whole assembly, but by a standing committee of the same (3)(4)(5).

Every village had a court of its own presided over by the village headman. He was assisted by the most prominent of the village elders (Grama Vriddhas)(6). The court was often referred to as the Panchayat. These Panchayats were far more powerful than they are today. " In King Mahindra IV's time (1016-1042) the headman and house holders of the Dasagama villages, used to sit in session even in regard to the crime of

murder and robbery"(7). Banishment was a punishment often inflicted by the village panchayat to those convicted of theft or adultery. According to Kautilya (8) the Panchayat could fine a cultivator who neglected his work and expel any thief or adulterer out of the village assembly. The headman eagerly sought an opportunity to decide cases and inflict fines, for we are told in Kulavaka Jataka (9) of a village headman who mourns for the fall in fines on account of an improvement in the character of the villagers, thanks to the influence of the Bodisatva. "When these men used to get drunk and commit murders and so forth, I used to make a lot of money out of them not only on the price of their drinks but also by the fines that they duly paid"! Again in the Ubhato Bhattha Jataka (10) reference is made to the judicial powers of the headman who fined a fisherman's wife for stirring up a channel and "she was tied up and beaten to make her pay the fine". Though according to some inscription the village Panchayat had power of life and death over the accused, it cannot be maintained that such jurisdiction was universal for we are told again and again by the law givers that the Panchayats were to send the serious cases to the Royal court. Says Brihaspati (11), "Relatives, companions of artisans, assemblies of co-inhabitants or other persons duly authorized by him should decide law suits among men except cases concerning violent crimes". This is agreed to by Vishnu, Narada and Sukra. In the Deccan of the Peshwa period (12) "Patels exercised without any defined limits to their authority, the power of slightly punishing for all offences such as abusive language, petty assaults and trespasses". The punishments seldom went beyond a few blows with open hand or confinement for a couple of days in the village chavadi. If the crime was of such a nature as to require a greater penalty, the delinquent was sent to the Mamlatdar. Fine cases are mentioned in section 42 of the Government Epigraphic Report of 1907 (13) where we find that persons guilty of accidental homicide were tried and convicted not by the local assembly, but by a meeting of four quarters, eighteen districts and the various counties or by Government and the people of the districts. But in civil cases the Panchayat courts appear to have had unlimited jurisdiction. The property involved in the suit

might be worth several thousands; still the local village panchayat and none else would try the case. This is clear from the Jagdale case about the dispute involving Watandari right to 20 villagers (14). When the case was carried to the King he referred it back to the Panchayats of the respective villages. The King in ancient India never encouraged parties to come to Royal courts unless the matter was one involving them or an important point of law. Shivaji's remarks, when one Ramaji Krishnan of Sonai took his case direct to him in 1668 are very interesting and important. He said to the plaintiff "if you so wish, I shall send your case to your own village panchayat; or I shall transfer the case to another Panchayat if that will meet your desire, or I shall refer it to the District Panchayat if that course recommend itself to you. Let me know what you like". Here we see Shivaji only echoing an ancient Hindu ideal. These Panchayat courts some times had appellate jurisdictions and matters not properly decided by other communal and popular courts were carried to these panchayats for decision.

In every panchayat court, the headman was the permanent chairman. But the other four members were selected by the parties' concerned - each party selecting two out of the four. Before any suit was entertained the parties had to sign a document agreeing to abide by the decision of the panchayat. They had also to provide securities for the payment of stamp duties and fines. The Maratha records which only echo ancient Hindu ideals refer to some allowances, which were being paid to the members of the Panchayat. Thus the task of the Panchayat was not thankless.

Some of the South Indian and Ceylon inscriptions throw much light on the system of village Government in those parts (15). The Vevalakatiya slab-inscriptions of Mahindra IV, King of Ceylon (1026-1442 A.D) although comparatively recent, is particularly interesting in this respect. From this inscription we learn that within the village (of Desagama) justice was administered by means of a communal court composed of headmen and responsinble householders, and the village assembly was empowered to carry into effect the laws enacted by the King-in-Council and promulgated by his ministers. It

investigated all crimes committed within the village, exacted the prescribed fines from the law breakers, and inflicted other kinds of punishments. But the most interesting points in the inscription are those which relate to the collective responsibility of the inhabitants of Dasagama for producing offenders within a limited time, and the fines imposed on the whole community in case of failure. We give a few extracts from this inscription.

"Touching the Dasagama, each headman (of these villages) as well as those headmen and house holders who have given security for kibi-gama, shall ascertain (the facts) when in any spot within this (district) murder or robbery with violence has been committed. Thereafter they shall sit in session and enquire of the inhabitants of the Dasagama (in regard to these crimes).

If the (offenders) are not detected, the inhabitants of the Dasagama shall find them and have them punished within forty-five days. Should they not find them then the Dasagama shall be made to pay (a fine of) 125 Kalandas (weight) of gold to the State.

Holders of village and of paman lands shall divide among themselves in accordance with former usage the proceeds of (the...) fines and other minor (?) fines..."

Apart from the Panchayat courts there were three other popular courts called the Puga, Sreni and Kula. The Mitakshara of Vijnanaswara (16) explains the Puga as an assemblage of persons of different castes and professions but residing in the same place. This appears to have been the chief village court, for, says Brihaspati (17), as we have already seen, "Relatives, companies of artisans, assemblies of co-inhabitants and other persons duly authorized by the King should decide law suits among men excepting cases concerning violent crimes. When a case has not been duly investigated by a meeting of kindred, it shall be decided after due deliberation by assemblies of co-inhabitants and when it is not decided by these, it should be tried by appointed judges". Says Sukra (18): "Those families, corporations or associations which are known ultimately to the King should investigate other cases excepting robbery and

theft. The Srenis (corporations) will try cases not tried by the Kulas, the Ganas (I think, they are the same as Pugas) will try the cases left by the Srenis and the officers will try the cases not decided by the Ganas. The counsellors are superior to the Kulas, and the Adhyaksha or chief officer in charge of justice is superior to the counsellors. And the King is higher than all – the dictator of what should be done and what not. Thus the decisions of these courts were not final". Judges are superior in authority to meetings of kindred and the rest: the chief judge is placed above and superior in authority to meetings of kindred and the rest; the chief judge is placed above them, and the King is superior to all, because he passes just sentences.

The reason behind the establishment of these popular courts in ancient India was the fear that the King and the judges might not know the customs and manners peculiar to a particular occupation. Says Brihaspati (19), "The King should cause the disputes of ascetics and of persons versed in sorcery and witch craft to be settled by persons familiar with the three Vedas only and not decide them himself, for fear of rousing their resentment". Sukra (20) makes this position clear when he says "The cultivators, the artisans, the artists, the usurers, the corporators, the dancers, the ascetics and thieves should decide their disputes, according the usage of their guilds. It is impossible to detect them through other's help. So they are to be found out with the help of persons born out of them". Again (21), "The King who desires his own welfare should refrain from giving any decisive opinion in a dispute among brahmins regarding the interpretation of a procedure of sacrificial ritual. The Kings should have the cases of ascetics investigated by the Trividyas or those who are versed in the Vedas. He should not himself decide the cases of those who practice the occult arts, for fear of exciting their anger. The foresters are to be tried with the help of foresters, merchants by merchants, soldiers by soldiers and in the village affairs are to be administered by persons who live with both parties (neighbours)". Manu(22) echoes the same sentiment when he says "Women should give evidence for women, and for twice born men twice born men of the same kind, virtuous Sudras for Sudras and men of the

lowest castes for the lowest". Says Narada(23), "In disputes among merchants, artisans or like persons and in disputes concerning persons subsisting by agriculture or as dyers it is impossible for outsiders to pass a sentence; and the passing of the sentence must, therefore, be entrusted to persons acquainted with such matters in a case of this sort". These popular courts were often more interested in arbitration than in formal judicial procedure. These can even be called arbitration courts.

The largest of these popular courts was the Puga, which appears to have been cosmopolitan in its constitution, consisting as it did of judges from vavious communites or professions. Appeals could be carried to this court from the other courts like the Kula and Sreni (24). "Thus the Puga was the highest court, because it was numerically the largest assembly on which were represented not merely the different castes, as in the Sreni but also the interests of different crafts, trades or occupations in the village or township"(25). A Sreni was a court intended mainly for the mercantile class(26). Each profession appears to have had a Sreni of its own in which disputes touching a particular profession and cases of professional jealousies were either settled or compromised. It was eventually a trade union court. Kula was the lowest court composed of members of a particular caste. This was probably concerned only with minor offences relating to a caste. As a matter of fact, the term court is too technical a term for these multi functioning bodies.

In addition to the courts enumerated above there were several itinerant courts and special tribunals. The work of the itinerant courts was calculated to be an effective check on the irregularities of the local tribunals. They were expected to take the village elders who had either mis-judged cases or exceeded their jurisdiction. Asoka(27) refers to such judicial towns as Anusuyamana. Says rock inscription III "by me consecrated 12 years was the command ordained. Everywhere within my dominions the Juktas, the Rajukas and the Pradisika, must every 5 years go out on tours by turns as will for other business too, as for this purpose, for this religious instruction". The

Dharma Mahamantras were also expected to tour round the empire for "taking steps against imprisonment, for freedom from molestation and for ganting release, on the ground that one has numerous off spring or is overwhelmed by misfortunes afflicted by age". Several references are also found in the Chola inscription to such itinerant courts (28).

Special tribunals were created for trying peculiar cases. Such a special tribunal, according to Gautama shall consist of at least ten members; four men who have complete mastery of the Vedas, three men belonging to the three orders enumerated first and three men who know three different institutes of law(29). "An actual instance of referring the decision of a criminal case to special judicial assembly is furnished by a south Indian inscription. A man was accidentally shot in a deer hunt and in order to decide the question of expiration which was to be prescribed for the offender; the brahmins of the village assembly at Lakkur, the residents of the main division and those of the sub districts met together and settled that a lamp be presented to a shrine". Another instance is furnished by a dispute over the right of worship in Argalur Temple. The judges referred the complicated issues to the Mahajanas of several agraharas and ultimately endorsed their decision(30).

The work of the regular courts was greatly lightened by arbitrators. All cases, except those concerning violent crimes, could be decided by arbitration by guilds of artisans, assemblies of co-habitants, meeting of religious sects and by other bodies duly authorized by the King (31, 32). Narada (33) is a great believer in the system of arbitration and he says "(In disputes) among merchants, artisans or the like persons and in (disputes concerning) persons subsisting by agriculture or as dyers, it is impossible for outsiders to pass a sentence; and the passing of the sentence must therefore be entrusted to persons acquainted with such matters (in a case of this sort)". This system had the great merit of giving substantial justice to the disputants and at the same time, preventing ruinous litigation.

The existence of many kinds of courts in ancient India provided ample opportunities for the accused person to carry

his case higher up if he really felt wronged. In fact, as already stated the right of the individual to get justice was safeguarded in a way unparalleled in the history of the world. Needless to say, appeals were however checked by the provision that the accused if he failed in his attempt was to pay a fine double that of the original amount (34). Says Narada, "If a man is of the opinion that the suit has been decided and punishment declared in a way contrary to justice, he may have the case tried once more, provided he should pay twice the amount of the fine inflicted"(35).

Says Sukra (36), "If somebody objects to the judgment as well as the decree of the King as being against Dharma he can have a re-trial by depositing double the fine. A re-trial or appeal may arise in those cases which have been vitiated by the undue pressure of witnesses and officers and by the defects of the King's own actions". (Book of Precedents).

Enough has been said in the previous paragraphs to show how important and numerous the courts were in ancient India. They were simple in appearance and free from many of the formalities of modern courts of judicature. That they did their work satisfactorily is clear not only from indigenous records but also from the testimony of foreign scholars (37) like Megasthenes, Fa-Hien and Hiuen-Tsang.

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CHAPTER 9
THE JUDGES

As administration of justice was always considered to be one of the foremost functions of the King, very great care was taken in the appointment of judges. If justice was the foundation of the state, the judge was the foundation of justice. Naturally only highly talented men were selected for judicial posts. Their knowledge had to comprehend not only the eighteen titles of law along with their sub divisions as enunciated by Manu but also logic, Srutis and Smritis and other sister sciences. Says Narada (1), "Let the King appoint, as members of a court of justice, honourable men of tried integrity, who are able to bear, like good bulls, the burden of the administration of justice. The members of the royal court of justice must be acquainted with the sacred law and with rules of procedure, be noble, veracious and impartial towards friend and foe. Justice is said to depend on them and the King is the fountain head of justice. If it is slain by injustice and truth by falsehood, the members of the court who look on with indifference are doomed to destruction themselves. Where justice, being hit by injustice enters a court of justice, and the members of the court do not extract the dart from the wound, they are hit by it themselves. He who having entered the court delivers a strange opinion, the true state of the case resembles a blind man who regardless swallows fish together with the bones. Therefore let every assessor of the court deliver a fair opinion after having entered the court, in order that he may not go to hell"(2). Brihaspati (3) prescribes the following qualifications for the judges, "Men qualified by the performance of devotional acts, strictly veracious and void of wrath and

covetousness, and familiar with legal lore", should be appointed by the ruler as judges or assessors of the court.

Sudraka (4), the great dramatist, speaking about the qualifications of a judge says, "A judge should be learned and skilled in tracing fraud; he must be eloquent and dispassionate and show equal grace to friend, foe and kinsmen; he must pronounce his judgment only after due investigation, he must defend the weak and punish the knave; he must not swerve from the path of virtue nor must he be avaricious. He must sincerely set his heart on discovering the absolute truth and at the same time avoid the anger of King". Among the qualifications, the most important appears to have been character, for we have instances of men with shrewd common sense being appointed as judges; but never were those of doubtful character employed. Says Narada (5), "When a member of a court of justice, actuated by wrath, ignorance or covetousness, has passed an unjust sentence he shall be declared unworthy to be member of the court and the King shall punish him for the offence". The following citations from the Dharma pada and the Jatakas (6) give to the readers an idea of what was expected of a judge. "No King should punish an offence and hear no pleas at all, not thoroughly sifting it himself in all points, great and small. The warrior chief who punishes a fault before he tries, is like a man born blind, who eats his food all bones and flies; who punishes a guiltless and lets go the guilty, knows no more than one who blind upon a rugged high way goes; he who all this examines well in things both great and small and so administrates; deserves to be the head of all. He that would set himself on high must not all gentle be, nor all severe; but both these things practice in company. Contentment the all-gentle wins, and he that is all severe hath wrath. So of the pair be well aware, and keep a middle path". Again circumspection was an essential quality demanded of the judges. Speaking of the qualifications of the judges says Vishnu (7), "Let the King appoint as judges men of good families, for whom, the ceremonies of initiation and so forth have been performed and who are eager in keeping religious vows; impartial towards friend and foe and not likely

to be corrupted by litigants either by ministering to their lustful desires or by stimulating them to wrath or by exciting their avarice or other such practices".

Manu (8) insists upon the judge being drafted from among the brahmins. A brahmin who subsists only by the name of his caste or one who merely calls himself a brahmana (though his origin be uncertain) may at the King's pleasure, interpret the law to him, but never a sudra. "The kingdom of that monarch who looks on when a sudra settles the law will sink low like a cow in a morass"(9). This idea is echoed in the great South Indian epic Shilappadikaram. The King, says the Shilappadikaram, (10) was always advised by brahmins when he sat in the hall of justice (Arakalam). This reservation of judicial appointments to brahmins could not have been universal for we do not find it in other law books. Says Apastamba (11), "Men of learning and pure descent, who are aged, clever in reasoning and careful in fulfilling the duties of their caste and order, shall be the judges in law suits". From what Apastamba says it is clear that he is not particular about brahmins being made the judges. Sukra Charya (12), for example, speaking of the qualifications of judges observes, "Where the King cannot personally attend to administration of justice, he should appoint brahmins who are versed in Vedas, self controlled, high born, impartial, unagitated and calm and who fear next life, are religious minded, active and devoid of anger. If the brahmana be not learned enough, the King should appoint a kshatriya for the purpose, or a vaishya who is versed in Dharma Shastras but reject the sudra". Proceeding further Sukra gives as a piece of advice, "The King should always appoint as judges men of the caste to which he belongs for most members of the royal caste are likely to be well qualified"(13). Apart from knowledge in law and in Vedas the judges were expected to be men of the world with practical knowledge. They were to be conversant with actions, character and attributes of people, impartial to both enemies and friends, to know the duties of men and are to be truthful (14). The judges were expected to be of a religious turn of mind and they all had to worship their Gods before entering into the work of trial. "Having occupied

the seat of justice, having covered his body and having worshipped the guardian deities of the world, let him with a collected mind, begin the trial of cases (15)".

Though instances are not wanting to show how the judges played to the tune of the King; it was the general rule that they should respect the supremacy of law. In Kalhana's Rajatarangini (16) we have several instances indicating to us clearly the high regard that the Kings had for law. We have cases where the councillors wanted to remove the house of an individual for some public purpose. The owner of the house did not like to be disturbed and so he goes to the King and speaks as follows; "O King, for what I am about to submit which is straight from the heart you should not be prejudiced since you are the judge in the matter. I am not less than a dog nor is the King greater than Ramachandra; why then do the councillors get agitated over this private talk between the two of us. In the mundane existence the body of the being which has had its birth is fragile armour and is fastened with only two clasps called the instinct of self and the possessory instinct. As in the case of your Highness who is resplendent with bracelets, armlets, necklaces and the like, we too, who own nothing are proud of our own body. Just as much as this palace joyous with the gleaming stucco is to your Majesty, the cottage where the window is made of the mouth of an earthen pot is to me. Since my birth this little cottage has been the witness, like a mother of both happiness and unhappiness; I could not bear to see it today levelled to the ground, the distress of mankind at the seizure of their dwelling house neither an immortal form fallen from the Vimana or a King deposed from sovereignty is capable of describing it. Notwithstanding this, if after coming to my dwelling your Majesty were to ask for it, yielding to the rule of good manners it would be the proper thing for me to give it". When he had given the reply in this way the King after going to his place purchased the cottage with money; there is no pride for those who are seekers of bliss. And the leather worker spoke to him at that place with hands folded hollow "O' King yielding to another under the compelling influence of law is proper on your part. As in the

past that of Pandu's son by dharma in the form of a dog, so by me who am an untouchable has been tested today the righteousness in your case".

The independence of the judiciary was also the recognized principle. Says Asoka(17) in Pillar Inscription, "The Rajukas have been placed by me over many hundred thousand lives. What is their (administration of) law or justice has been made by me subject to their own authority, so that the Rajukas assured, and without being afraid, may set about their tasks, distribute the good and happiness of the people of the country, and also bestow favours. They shall acquaint themselves with what causes happiness or misery, and, with the help of the pious, admonish the people of the provinces that they may gain both here and hereafter". A bad judge had to suffer punishment both here and hereafter. Says Narada (18), "Those members of the court who after entering it, sit mute and meditative and do not speak when the occasion arises are liars, all of them. One quarter of the iniquity goes to the offender; one quarter goes to the witness; one quarter goes to all the members of the court; one quarter goes to the King". Abul Fazl (19) only echoes this sentiment when he says in the Ain-I-Akbari, "The judge must consider it a religious obligation to discharge the duties of his office with impartiality and justice". Even the King was not free from punishment if he acted wrongly or from an evil motive. If somebody presents as right to the King something, which is wrongful, and if the King accepts that as right without careful consideration, he is regarded as the real actor and gets eight-fold sin. The councillors must not be indifferent to the immoral methods of procedure adopted by the King, for they are thrown down hellward together with the King (20). According to Kautilya (21), as there was no higher human institution to punish him, he was asked to throw some thousand coins into the sea. When the King punished an innocent man he shall throw into water dedicating to God Varuna a fine equal to 30 times the unjust imposition; and this amount shall afterwards be distributed among the brahmins (22). The other judges were liable to be punished if they erred in the discharge of their duties. Says

Sukra (23), "Whoever, Amatya or chief judge decides a case contrary to law, the King can try it again, while he shall be fined a thousand". According to Vishnu (24) a judge who lived by bribes was to lose his entire property. Kautilya has a separate chapter on punishment of government servants for bad conduct. Says he (25), 'When a judge threatens, browbeats, sends out or unjustly silences anyone of the disputants in his court, he shall first of all be punished with first amercement. If he defames or abuses anyone of them the punishment shall be doubled. If he does not ask what ought to be asked or leaves out what he himself has asked or teaches, reminds or provides anyone with previous statement he shall be punished with middle-most amercement". Again, 'When a judge does not enquire into necessary circumstances, enquire into unnecessary circumstances, makes unnecessary delay in discharging his duty, postpones work with spite, causing the parties to leave the court by tiring them with delay, evades or causes to evade statements that lead to settlement of a case, help witnesses giving them cases already settled, or disposed off, he shall be punished with amercement. If he repeats the offence, he shall both be punished with double the above and dismissed. When a judge or a commissioner imposes an unjust fine in gold, he shall be fined either double the amount of the fine or eight times that amount of imposition which is either more or less than the prescribed limits".

When a judge or a commissioner imposes an unjust corporal punishment, he shall himself be either condemned to the same punishment or made to pay twice the amount of ransom leviable for that kind of injustice. When a judge falsifies whatever is true amount or declares as true whatever amount is false, he shall be fined eight times that amount. He was expected to keep a smiling countenance even before the worst criminals (26).The judges appear to have worn a special dress when entering the court. What exactly was the kind of dress, we have no records to find out. The judges were very human and informal. For example, when the mother of Vasantasena enters into the court she is asked very respectfully to take her seat. People however looked on the judges with profound

veneration, for they were identified with law. In Mrichhkatika (27) for example, the beadle says, "Answer the question the law put in". Thus the position of the judges in ancient India was one of very grave responsibility. Every minute they were afraid of either the Divine wrath or the King's wrath. Says Sukra; "The King should by exemplary punishment deprive those judges and officers of their jurisdiction who without carefully considering the cases pass sentences through fear, greed or passion. In short, 'censure is very easy for a judge to earn, but the chances of his being praised are very few"(28).

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CHAPTER 10
THE JURY

In ancient India, the heavy responsibility of judges seems to have been considerably lightened by the presence of the jurors in all-important cases (1). A panel of jurymen appear to have existed for every court and these seem to have had separate chambers of their own in every court. These are referred to as Sabhyas(2). These Sabhyas were not servants of the King in the sense in which the judges were. They could differ from the King and other judges of the court (3). But the existing records do not enable us to say whether the verdict of the jury was binding on the judges and the King. In Mrichhakatika (4) we find the jurors telling that their duty consisted in investigating the facts, but the final decision lay with the King. The jury system in India is very old. We have reference to a trial by jury as early as B.C.43 in Buddhist records. The occasion was brought about by the then heretical practices of Vaisah which were submitted for examination to a committee of eight presided over by a judge. In conformity with a rule established by Sataya, one Revata proposed to refer the matter to a jury. He chose four Bhikkhus from the East and four from the West. This choice was formally approved by the Sanghs. On this occasion Gautama said, "If O Bhikkhus, pointless speeches are brought forth and the sense of any single utterance is not clear, I enjoin upon you, O, Bhikkhus to settle the case by referring to a jury or commission". Every one could not be elected to be a juror. The Ubbahika (5) must be competent to point out both friends and foes, to get them to understand a thing, to get them to suit and recognize it, and able to pacify them. Secondly, the person to be chosen as the jury must be clever" in judging both as to the origin and as to the settlement of disputes. And thirdly he must understand

legal questions, the origin thereof and the way that leads to the closure thereof. It describes also the mode of creating a jury: (6) "First, the Bhikkhu was to be asked as to whether he was willing to undertake the office. Then some discreet and able monk was to address the Sanghs thus: May the venerable Sanghs hear me, let it appoint Bhikkhus of such and such names on a committee to settle the case". In Sukra Niti (7)we find that even the audience in a court is regarded as part of the jury, in regard to the men who happen to know the law. Kautilya (8) thinks that in cases of differences of opinion, the view of the majority was to prevail.

Only men of very high status and character were appointed as jurymen. According to Sumati (9), jurymen were to be only brahmins-he goes so far as to say that an unlettered brahmin was preferable to a lettered sudra. But Yajnavalkya (10) and other law givers (11) make it clear that jurymen could be of any community according to the needs of the case. Gautama (12) very aptly remarks that men of technical knowledge should be summoned in respect of cases in which such knowledge is necessary irrespective of caste. Merchants, for example, appear to have been in high demand as qualified to serve on the jury. Their strong common sense was evidently their chief merit or perhaps they were likely to have legal knowledge.

The jurymen and the assessors were also liable to punishment if they did not discharge their functions properly. Says Narada (13) "If a verdict contrary to justice has been passed, the assessors of the court must pay the fine because nobody certainly can act as a judge without incurring the risk of being punished eventually". Again says Yajnavalkya (14) "Where any unjust sentence has been passed the blame attaches to the assessors of the court. Therefore they have to pay the fine".

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CHAPTER 11
SOME CASES

The judges some times had very difficult cases to decide. On such occasions the judges did their work very satisfactorily by their extraordinary shrewdness and common sense. We have several stories in the Panchatantra(1), Hitopadesha(2)and Rajatarangini(3) illustrating the cleverness of the judges. Here are some stories to illustrate the intellectual powers of the judges.

The missing money jar

In the old, old days a great King ruled over the wide rice-lands watered by the river Cauvery. So great a King was he that the other Kings of the North and South, a thousand miles away, trembled when they heard his name mentioned. But more than power, he loved to do justice. Said a saint of those days, 'There will always be rain and rich harvest in the country of a King who rules justly'. And the subjects of King Chola(4) prospered.

Yet here and there among King Chola's subjects there was a knave, and a clever knave can cause much harm, even though the King's judges seek to do justice most strictly. This was what happened in the matter of the four thieves and an honest dame. But it ended in the King finding a most shrewd magistrate and so led to the conviction of many rogues.

There were, says the chronicle, four worthless fellows who made their profit by what they stole from less wary folk. It happened that they chanced on a rich spoil, and having no use for it for the moment, they put it in a jar, sealed the jar up with the utmost care, each with an eye on his own neighbours,

took the jar to an honest old dame whom they knew, and begged her to bury it somewhere in the floor in her hut. "And" said they, "never give that money jar to us back till we all four come for it".

The days were hot, and one midday as the four wastrels lounged not far from the old woman's hut they remembered that it was good to drink butter-milk in times of fierce sun shine. "Go thou", said they to one of them, "to the dame in her hut there and ask her for a jar of butter-milk".

"Be it according to your wish", said he, and went to the old woman. But his cunning mind was at work.

"Thou must give to me the jar we gave to thee, mother", was what he said to the dame.

In her own way, however, she was not to be deceived. She came to the door of her hut and called to the other three, "Am I indeed to give the jar to this fellow?"

"Give it to him, and give it quick," They shouted back. Suspicion allayed, she handed a crow-bar to the man and showed him the corner of her hut where she had buried their treasure. In a few moments that thief of thieves had dug up the money jar and was away with it.

The other three waited and thirsted for a while, wondering why their comrade did not come. At last they also went to the hut. The fraud was known. The whole village was filled with the noise of the thieves. The three thieves cursed their ill luck and cursed the honest old woman and dragged her before King Chola's Chief Justice, declaring that she had made away with their money jar for herself. King Cholas's Chief Justice had no liking for the three knaves, but he saw no innocence in the old dame and being a mere legal pedant he decided in favour of the rogues.

"These men left the jar with thee for safe keeping. Thou art responsible for it. Thou must return it" was his impossible judgment.

The honest old woman left the judge's presence loudly bewailing the cruelty of the fate written on her forehead, which had brought her this calamity.

Half a dozen boys were playing a game of pitch and toss with arecanuts in the street besides the place of justice. As the weeping woman came from the place of justice one of these lads, seeing that she was in sorrow, asked her what was wrong. At once he heard the story, with 'Ala' at the end of every sentence.The boy was no ordinary boy. He listened to all the old dame's many words with courtesy. Then he looked at the nuts in his hand and at the holes in the ground into which it was his turn to try to throw them. As sure as these nuts will find the hole, so surely shall the judge who gave this unjust sentence become a corpse", cried he and tossed the nuts into the holes.Some courtier heard the lad's contemptuous words and made them known to King Chola. The King's guards were sent and they dragged the boy before the King."Young busybody" raged the King, "how dost thou dare to flout the justice of my judges. Thou shalt retry the case thyself. See that thou make a better judgement than my Chief Justice had made. Or thou shalt suffer thyself!" The lad was undismayed. He called the dame and the three scamps. He made them tell the story once more. Then he said, "This is my judgement. When the four together ask for the money jar, the woman must find it for them. But till the four come for it, there is no need. Set her free". "The lad is right!" exclaimed the King and called him Mariyathai Raman and made him Chief Justice.

Mariyathai Raman convinces his father

On hearing that his son Raman had been made King Chola's Chief Justice, Raman's father was greatly afraid and urged him to escape the task, which was bound to end in failure. But Raman said, "Shall I kick the Goddess of good luck when she comes to me of her own accord? Trust the Gods. And trust the King, I remain Chief Justice". Unable to change this resolution, Raman's father left the Court. He was so sure that by some mistake young Raman would turn the King's favour into anger, an anger which would overwhelm young

Raman's family as well as himself, that he set out for a distant city where he might hope to hide till his headstrong son had worked out his ruin and the King's anger had passed.

On his way he came to the house of a man who had two wives. Of these, the older was a virtuous woman but had no child. The younger was a wicked hussy and she had a baby son. The householder was away from his home. But the usual hospitality was shown to Mariyathai Raman's father who was careful not to say who he was and when night fell, he was given food and a mat and after eating slept as much as an anxious man might on the veranda outside the house door.

In the morning he was awakened by shrill clamour within the house. During the night the younger wife had let her lover come to her. While he was with her she had feared lest her babe should wake and cry and rouse the house and she had choked it. In the morning came the thought of the anger of her husband if he guessed that she had murdered his son. So she accused the older wife of having killed the infant out of jealousy.

The older woman had only her own word for her innocence. The neighbours believed the younger wife and showed their approval when she set out to charge the older wife with the murder before the King's Chief Justice-the boy Mariyathai Raman.

Mariyathai Raman's father heard the noise, accusations and denials of the two women and saw the hussy and her friends start off to the place of justice. Then he said to himself, "If my son young Raman can find the truth in this matter, there is no need to fear that he will not make a notable judge". So he went back to the capital of King Chola disguised so that no one should know him, and stood in the place of justice when the younger wife made her accusation of murder against the older.The accusation was made in due form. The young Chief Justice sent his guards to bring the older wife. The older wife utterly denied the accusation. There was no other evidence but the assertions of the two women.

How to get at the truth?Raman's father trembled lest young Raman should be foiled. But the young Judge had his own way of discovering the worth of the two before him. "Strip off your clothes", he sternly ordered, "pace thrice round this place of Justice. Then each shall tell the truth on oath".The younger wife, being what she was answered. "Be it so". The older wife prized modesty more than life. "Let me suffer death as the murderess of the babe, rather than be put to such open disgrace!" she cried.Mariyathai Raman at once saw that the older woman was a good woman and that the other was not. He knew whom to believe and the real murderess found the saying of the ancients true, "she willed one thing; God willed another".Sure now that young Raman was gifted with wisdom of all the other judges, Raman's father threw aside his disguise and blessed him in the place of justice.

The harm done by the cat

In one of King Chola's cities there were four men who traded in cotton. The rats in their warehouse did much damage by nibbling at the cotton. The cotton merchants therefore got a cat. Each of them took one leg of the cat as his share, and each of them adorned the leg belonging to him with ankles, chains, little bells and similar ornaments.

One day the cat wounded one of its legs. Then the owner of that leg bound a rag soaked in oil round the wounded leg, much to pussy's relief. But a mendicant will not stay in one hermitage and a cat will not remain in one place. The wounded cat would hobble about. And so disaster came, as when 'the demon sprung out on the men who were digging a well, the cat went too near the fire in the cotton merchants' cooking place. The oiled rag on its leg caught fire. The startled cat jumped on to the heap of cotton. The cotton blazed up. The cat got away but in an hour the whole of the cotton and the warehouse had been destroyed utterly. The other three merchants wanted the owner of that particular leg to pay the entire damage. The case went before Mariyathai Raman who said that the damages had to be paid by the other three to the owner of the wounded leg. For in moving from place to place

the cat only made use of the three legs and it was this moving of the cat that was responsible for the disaster.

Jatakas

The Jatakas give us several instances of the wisdom of the judges. In one Jataka (J III 202 to 206) we have the following: some village boys stand charged of the murder of a doctor. It happened that the boys were playing at the foot of a banyan tree at the entrance of the village. A poor old doctor who had no practice at that time, strayed out of the village to this spot and saw a snake asleep in the fork of a tree with its head tucked in. He thought, "there is nothing to be got in the village. I will cajole these boys and make the snake bite them, and then I shall get something for curing them". So he said to one of the boys "If you were to see a young hedge hog, would you seize it"? "Yes, I would" the boy answered "See, here is one lying in the fork of this tree". The boy climbed up the tree and seized it by the neck and when he found it was a snake, he did not allow it to turn upon him, but getting a good grip of it, he hastily flung it from him. It fell on the neck of the old doctor and he fell down dead on the spot. The boys were arrested and placed before the King for trial. The whole matter was carefully investigated and when their innocence was proved, the boys were set free.

Though these are mere stories, they show us how intelligent and shrewd the judges were expected to be. Some times the judges were consulted on purely domestic issues. We have the interesting story of the four foolish brahmins, who went to the court to know who among them was the greatest fool. The judges wanted each one of them to give an instance of the most foolish act he did and finally they decided that all were equally notorious in foolishness.Though the judges were generally fair and impartial, they were not free from royal influence and some times wrong judgements were given to please the Kings. That the judges were afraid of the King now and then is evident from the Mrichhakatika. We see the judge here first refusing to take up the case of Sakra because it was

frivolous. Sakra, being the brother-in-law of the King, then says that he will report the matter to the King. The judge is perplexed and then says, "This fool might do anything". So saying he decides to take the case. Inside the court, we find Sakra taking undue advantage of his position. He lays his hand on the head of the judge. But the judge disliked all this and coolly said, "Thorns and weeds grow abundantly on a fertile soil, Sakra even wiped out by means of his foot a statement recorded by the clerk". We have again that fascinating south Indian story of Kovalan and Kannagi where the former was ordered to be executed though Kovalan was a paragon of virtue. Again the Jatakas give us instances of judges who took bribes. But such instances are not many.

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CHAPTER 12
LAW OF EVIDENCE - ORDEALS

The word 'ordeal' corresponds to the German word "Urtail" meaning judgement or doom. It was looked upon as the means of procuring the help of the Divine witness when human witnesses failed (1).

Ordeals appear to have played a very prominent part in the administration of justice in ancient India. It was the logical conclusion of all legal procedure and as such its history constitutes an important chapter in the Book of Justice. An ordeal was a concluding method, not a preliminary, nor an invariable form, the essential condition of its use from the most primitive to the latest examples being that other more legal methods of issues shall have failed. Thus, says Katyayana (2) "if one adduces human evidence and another appeals to a divine test, the King should admit only the human testimony. Even if human testimony offered by litigating parties do not cover the whole subject matter of the suit, it should be reveived in preference to the divine test, though the latter may cover the whole ground. In litigation where there are witnesses no divine test is allowed and if there is written evidence even witnesses are taboo (3)". There are numerous cases recorded in Maratha papers (4) where the defendants' request to make the plaintiff undergo an ordeal was refused on the ground that human evidence was available and resort to an ordeal was out of the question. Bhrugu (5) maintains that in all Sahasas of the worst type, the truth should be found out by means of divine proof even though there may be witnesses.

Thus it is clear that ordeals were looked upon as sacred instruments of justice to be made use of occasionally.

As far as possible the judges in the courts of ancient India tried to escape having recourse to ordeals; but when they realized that the case could not otherwise be established, they were compelled to subject the parties to an ordeal. "The man who through vanity of learning does not have recourse to the divyas (ordeals) adopted by me", says Vasishta "is an irreligious man" (6). "The Gods undoubtedly take away half the merits of a brahmana who through vanity does not swear by the divya method even when it is pressed before him". The Sukra Niti (7) refers to ordeals as "divya sadhana" and recommends recourse to ordeals when yukti fails. The ordeals are known as 'divya' because they were used by the devas or Gods in the determination of difficult cases (8).

The ordeals obtained in almost all countries in the ancient world and in some it persisted as late as the 19th century. Zoroaster speaks of as many as thirty three ordeals (9). In Babylonia for example, a man accused of sorcery or a woman charged with adultery was invited to leap into the Euphrates and the Gods were on the side of the best swimmers. If the woman emerged alive, she was innocent; if the sorcerer was drowned, his accuser received his property; if he was not he received the property of the accused (10). The second law of the code of Hammuraby (11) provides the following, "if a gentleman has cast the accusation of witch-craft the accused shall go to the river; having plunged into the river, if the river overcomes him, his accuser shall seize his house. But if the river declares that gentleman clean and he be rescued, he that cast the accusation of witchcraft against him shall be put to death. He that plunged into the river shall seize the house of the accuser". In Chinese law it was open to a husband to kill his wife along with her paramour if he found both of them together. The magistrate to satisfy himself about the guilt of the woman had recourse to the following ordeal: - "Take a water jar and fill it with water, one half from the river and the other half from the well. This is called Yin-Yan water. Take a

stick and stir the water into a swiftly whirling eddy. Then take the heads of the decapitated corpses of the man and the woman and place them without delay in the water. If the pair were really guilty, the heads will turn nose to nose; but if they were innocent they will turn back to back, one above and the other below in the jar". In early Europe there was the ordeal of the cross. The two litigants stood before a cross with arms outstretched like the cross, which they faced, and the first to let his arm drop was the vanquished (12).

Brihaspati (13) mentions the superiority of ordeals as a means of arriving at truth in certain cases. A person committing fraud in jewels, pearls and coins, a person taking away a deposit, a person wounding another, a person enjoying another's wife are always to be examined by an ordeal of oath. In charges of deadly sins, if witnesses represent, if a party should submit to ordeals the King should not examine witnesses. Again "when doubt arises in a document or oral evidence and where inference is uncertain, there the ordeal is the means of clearing it. Vyasa (14) makes the position clearer still. In cases of forgery, the decision is to be made through an ordeal. If a crime is committed in desolate wood on a night or in the inner parts of a house and if a deposit is denied, proof by ordeal is proper. Pitamaha, however, observes that the King was the final authority in cases in which there was no probability of an ordeal. "Where there is no writing, no possession, no witnesses and no probability of an ordeal, then the King is the authority, since he is the lord of all"(15).

While in other countries ordeals were forced upon the parties to a suit, it was the peculiar glory of India that the ordeals were always looked upon as optional. If the parties did not agree, then judges could not force them to undergo an ordeal. Says Narada(16), "where no one declares himself ready to undergo punishment, the ordeal cannot take place. An ordeal shall be administered by litigants where there is reason for it, but not otherwise. Therefore an intelligent, virtuous, righteous and wise King or chief judge should abstain carefully from administering any one of the five ordeals unless both

parties consent to it". Again it is said that "When the accuser would not himself abide by the judicial sentence, in case the contrary is proved, then no ordeal is prescribed; it is well declared that the accused should abide to bind himself by the judicial sentences in all the ordeals. In prescribing an ordeal the judge was governed entirely by the Sruti"(17). An ordeal is to be prescribed to the accused only when it is so said in the Sruti and "never shall a judge (of his own accord) order an accuser to go through any one of the ordeals. Just as an accused had the right of refusing to undergo an ordeal, so also he could himself express his desire to undergo an ordeal when the judges would give up having recourse to human evidence. When the case is an indictment for murder, though means of human proof do exist, yet if the accuser would, of his own accord, have recourse to ordeal, then human evidence should not be enquired into"(18). In later times, however ordeals appear to have been resorted to for all sorts of cases without any reference to the Srutis.

The judges were prevented from subjecting to ordeals persons who were infirm, or weak or otherwise unable to undergo the ordeal. Says Narada (19), "An ordeal should never be administered to persons engaged in performing a vow, to those afflicted with a heavy calamity, to the diseased, to ascetics or to women. Vishnu (20) however, holds that in such cases the suspected should be subjected to only the ordeal by balance. In his own words "To women, brahmins, persons deficient in an organ of sense, infirm men and sick persons, no ordeal by balance should be administered". He is careful enough to add that ordeal by balance must not be administered to them when a wind is blowing. It was also laid down that certain ordeals were not to be prescribed for some persons.

The ordeal by fire for example, could not be administered to lepers, to infirm persons or to blacksmiths. The ordeal by poison could not be administered to bilious persons, lepers and brahmins."The ordeal by water must not be administered to persons afflicted with phlegm or other illness, to the timid, to the asthmatic, nor to those who gain their subsistence from water such as fishermen and the like". Again we find

Katyayana (21) (alone among the law givers) allowing a substitute to undertake the performance of an ordeal, but only if the person concerned is an unbeliever or guilty of one of the mortal sins or a mixed caster or outside the brahminical community.

The first clear reference to an ordeal is in the Aitreya brahmana (22) for both in the Rig Veda and the Atherva Veda the references are indirect. In the Panchavimsa Brahmana (23) we are told that Vatsa established his purity of origin against a taunt by a rival by walking through fire. (XIV-6-6). The authors of the Dharma Shastras are not agreed regarding the number of ordeals. The early writers speak of five ordeals such as ordeal by balance, fire, water, poison and consecrated water. The author of the Miitakshara, the source book of modern civil law speaks of eight ordeals such as Tula (balance); Phala (holding a red hot iron ball); Visha (poison); Kosa (drinking water in which the image of a God had been washed); Tandula(ejecting chewed rice grains) Taptamasha; (taking a masha weight of gold out of heated oil); Agni(fire); Dharmadharma (drawing a hidden image of justice or injustice out of large jar). According to Manu there were only two ordeals, while Brihaspati and Pitamaha enumerated nine-each to be administered according to the character of the accused and the nature of the offence. Hiuen Tsang however speaks only of four ordeals –in his own words "These are by water, by fire, by weighing and by poison. In the water ordeal the accused is put in one sack and a stone in another and then the two sacks are connected and thrown into a deep stream; if the sack containing the stone floats and the other sinks, the man's guilt is proved. The fire ordeal requires the accused to kneel and tread on hot iron, to take it in his hand and lick it. If he is innocent, he is not hurt, but it he is burnt he is guilty. In the weighing ordeal, the accused is weighed against a stone and if the latter is lighter, the charge is false-if otherwise it is true. The poisons ordeal requires that the right hind leg of a ram be cut off and according to the portion assigned to the accused to eat, poisons are put into it and if the man is innocent he survives and if not the poison takes effect"(24). The Smriti Samghraha

(25) also speaks of four ordeals. Thus the number of ordeals varied from two to nine.

Each ordeal appears to have had a season when alone it could be administered. Says Narada "during the rains let the ordeal by fire be administered; in the autumn season the balance is declared to be the proper kind of ordeal. The ordeal by water should be applied in summer and the ordeal by poison in cold weather"(26). In regard to civil suits the nature of the ordeal depends upon the amount involved-fire ordeal in suits of Rs.1000, poison in suits of Rs.750, balance ordeal in suits of Rs.666, virtue and vice in suits of Rs.666, water in suits of Rs.500, virtue and vice in suits of Rs.250, vice in suits of Rs.125 and ordeal by oath in suits of Rs.62.

Several rules (27) were to be observed by the judges and the parties concerned before an ordeal could be administered. Before an ordeal took place, the person whose innocence was to be proved had to fast for a couple of days; he had to purify himself by performing special sacred ablutions. He would then consult the priest about the case and in his company proceed to an assembly of brahmins to receive their blessings. He would address the brahmins by chanting a Sanskrit verse which means:- (28)"That this day shall be a fortunate one for me, a day of virtue, a day on which it will be recognized I am innocent of the sins of which I am accused, a day on which I shall receive many blessings". The company of brahmins would then reply in one voice. "May this day be a fortunate one for thee, a day of virtue, a day on which thy innocence will be proved, a day on which thou shalt receive many blessings". The accused who had agreed to undergo the ordeal generally appeared in wet clothes and the ordeal was always undergone in the presence of the images of Gods, assessors and judges.

Each ordeal had specific rules. In the ordeal by balance (29), a balance was produced and the accused was weighed against pieces of wood and darba until a correct balance was obtained. Then he would be sent away with priests to perform another set of prayers. After he returned a palm leaf on which a Sanskrit sloka was written in coloured ink would be tied to

his head. The sloka meant "Sun, moon, wind, fire, heaven, earth, water, virtue, Yama, day, night, dusk and dawn, you know this man's deeds and whether the accusation is true or false". Following this would be a complete and detailed account of the crimes of which the person was accused. Then the man with the palm leaf on his head would be asked to sit again in one of the pans of the balance. Before this act the officiating priest would say, "Scales, you know every thing that is in the hearts of men, you know their vices and virtues; what escapes man's perspicacity is not hidden from you. Behold a person who is accused of a crime of which he declares himself to be innocent and who desires to prove his innocence to the public. If he is not guilty, justice demands that you should pronounce in his favour". "Scales, the gods have appointed you to dispense justice to mankind and to reveal truth. Show it therefore on this occasion and if the man you are about to try is guilty do not allow him to preserve his equilibrium, but the weight of his sin turn the scale against him". If on the second weighing, the accused showed more weight, then he would be held guilty; if less, innocent and if equal, only partially guilty. Alberuni (30)-observes "In the ordeal by balance, a man after the first weighing calls upon spiritual beings to witness his veracity, writes down what he speaks on a piece of paper and fastens the paper to his head. When placed on the scale again, he ought to weigh more than on the first occasion to, prove his innocence". (The slight difference is probably due to reliance on hearsay evidence). If in the course of weighing, the scales break or the beam or the hook split, the judge, according to Narada, (31) should pronounce formal declaration of innocence. But Vishnu maintains that in such cases the party should be again placed on the scale. Very strict regulations had been provided regarding the nature of the balance and the accuracy of the measurement. Says Vishnu (32),"the beam of the balance should be made of strong wood (such as that of Khadira or Tinduka trees)five hastas long and two scales must be suspended on both sides of it and the whole suspended upon the transverse beam by means of an iron hook. A man out of the guild of gold smiths or of braziers should make it equal on

both sides. He was to be very careful for "those place of torture which have been prepared for the murder of a brahmana or for a false witness, the same places are ordained for a person appointed to look after the weighing, who acts fraudulently in his office".

Speaking of the ordeal by fire, says Vishnu (33),"he must make seven circles, sixteen angulas in breadth each, the intervals being of the same breadth. There upon he must place seven leaves of the holy-fig tree into the hands of the person (about to perform the ordeal) who must turn his face towards the east and stretch out both arms. Those beams and his hands he must bind together with a thread. Then he must place into his hands a ball made of iron, red hot, fifty palas in weight and smooth. Having received this the person must proceed through the seven circles. Without either walking at a hurried pace or lingering on his way. Finally after having passed the seventh circle, he must put down the ball upon the ground. That man whose hands are burnt ever so little, shall be deemed guilty; but if he remains wholly unburnt he is freed from the charge". Abbe Dubois, in his famous book on Indian character, manners and customs has given a clear account of all these ordeals. Says he (34) "In the ordeal by fire, they first of all draw light circles on the ground, each sixteen fingers in diameter, leaving the same amount of space between each. Fire is the pressing genius of the Ist circle; Varuna, the wind, Yama, Kubera, the moon and Savitru preside over the seven others. These eight circles are arranged in two parallel lines. A ninth placed by itself, is dedicated to all the Gods. All the circles are purified by being smeared over with cow-dung; on the top of which they scatter darbha grass. They then offer puja in turn to the deity presiding over each circle. Meanwhile, the person about to undergo the ordeal bathes without removing his clothing and while still quite wet places himself in the Ist circle of the line on the west side, his face towards the east. They then dip his hands in wheat flour mixed with curdled milk and cover them over with seven leaves of the Aswatha tree, seven leaves of Choni and seven stalks of darbha grass.

A blacksmith then heats a small iron rod in the fire to red heat. The rod should be about eight inches long and weight of fifty rupees. Then the Purohit places some fire purified according to the rights of his Veda to the south of the ninth circle and performs homam. He invokes the Goddess of virtue in the same words as used in the ordeal by scales. He throws the red hot iron into water; and after it has been reheated to the same degree he speaks as follows (35) "Fire, you are the four Vedas and as such I offer you homam. You are the countenance of all the Gods and you are also the countenance of all learned men. You take away all our sins, and that is why you are called pure and purifying. I am the greatest of sinners, but I have the happiness to see you. Purify me from all my sins and if this man who is about to undergo the ordeal is really innocent refrain for his sake from making use of your natural power of burning and do him no harm". He finishes his discourse by doing homage to the power which this element possesses of penetrating into the innermost recesses of the human heart and discovering the truth. Then he says 'Glory to the three worlds', and finally pronounces: 'O fire, come near and stay here, stay here', and he offers a puja. The accused places himself in the first circle and the purohit, taking up the bar of red hot iron with some tongs, says again, 'O fire, you know the secrets of men! Reveal the truth to us on this occasion!' Then he puts the red hot iron on the hands of the accused, who then, still keeping hold of the iron runs over all the circles in such a manner as to place his feet alternately on all. Arrived at the eighth circle, he throws the iron on to some straw which should be set fire to by the contact. In the case of the accused dropping the iron before he covered the whole distance, the trial would have to begin over again; if, on an inspection of his hands, it is seen that the iron has not injured the skin, he is considered innocent. Any accidental burn on any other part of the body would not count. To make quite sure that the contact with the red hot iron has produced no sensible effect on the skin, the accused is given some unhusked rice which he has to rub vigorously between his hands to separate the grain from the husk" The writers of the Dharma Shastra however say that at the beginning of the whole ceremony the judge shall

cause the person to rub some rice in his hands and shall mark with the red sap the already existing scars, eruptions of the skin etc., which have thus become visible.

The latest reference to this ordeal is in the year 1783 when a brahmin underwent the ordeal in Benaras. After prayer they made the iron ball red hot and taking it with tongs placed it in the hands of the accused; and he walked with it step by step, the space of three yards and a half through each of the seven intermediate rings and threw the ball into the ninth, when it burnt the grass that had been left in it. He, next to prove his veracity, rubbed some rice husk between his hands which were afterwards examined and were so far from being burnt that not even a blister was raised on either one of them.

In the case of the water ordeal, the accused was made to stand in a river with water up to his hips. A brahmin who stood by his side chanted the following mantra. "Water, you are the life of all that has life; you create and destroy at will; you purify everything and we may always be sure to learn the truth when we take you for judge. Settle the doubtful question which now concerns us and tell us whether this man is guilty or not". Three arrows would then be shot from a bow and a man sent after them to bring them back to the archer. If the accused who was instructed to dip his head into the water brought them back, then his guilt was considered to be proved.

The ordeal by poison was of two kinds. One was to make the accused to take out of an earthen pot a cobra without being bitten by it. The second by drinking, and still not dying, a cup of visha, distilled from a deadly root. Says Narada (36),"Except poison from the sringa tree, all others sorts of poison must be avoided". Before the poison could be given to the accused; it was the duty of the officiating priest to repeat the following address to poison: - "Poison, you are a harmful substance created to destroy the guilty and the impure. You were vomitted by the great snake Vasuki to cause the death of guilty giants. Behold a person who is accused of a crime of which he declares himself to be innocent. If in reality he is not guilty, divest yourself of your injurious qualities and become to him amrita".

The ordeal by kosha was a very tame affair when compared with the preceding ordeals. It consisted in drinking the water in which the images of Gods had been dipped and not falling ill for two weeks after it. In the rice ordeal the alleged wrong doer was given a quantity of uncooked rice equal in weight to a Saligrama and was asked to chew it. If the rice came out of his mouth dry after the chewing had been finished, he was not guilty. In the ordeal of boiling oil, the accused was made to put his hand into a cauldron of boiling oil and take out a gold coin and still express or feel no pain. In the ordeal by fire a pit of considerable depth was dug and filled with aswatha logs. The accused was asked to walk over it and if he came out harmless and without blistering his naked feet, an image of dharma made out of silver and another of adharma made out of iron were placed in a large jar. The blind folded accused must then draw out the silver image to prove his innocence. In later times we hear of several new kinds of ordeals, which are more or less modifications of the earlier ones. Thus Ali Ibrahim Khan gives, as practiced at his own time, ostensibly in accordance with older texts, variants of the ploughshare and fire ordeals. As tests of witches, we hear of the use of the ordeal of handling hot balls, the walking over hot coals and heated plough shares, the throwing into water, the test by tying a bag of cayenne pepper over the head (if it failed to suffocate, guilt was held to be proved) and the rubbing of the eyes with capsicum (failure to shed tears was thought to establish innocence).

The motive of the ordeal was not to injure. It was not looked upon as a punishment. Every care was taken to see that the ordeal in question did not cause more pain than was incidental to the ordeal itself. In any case no ordeal would be allowed to kill any one undergoing it. There were certain ordeals, as we have already seen which did not cause even the slightest pain. The man that came out successful in an ordeal was looked upon with great respect. He was amply rewarded by the King. It may not be fair to our ancestors to judge the utility of the ordeals from the modern stand point.

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CHAPTER 13
LAW OF EVIDENCE - DOCUMENTS

Evidence formed the very foundation of trial and judgement. No judge could convict an accused without adequate evidence. In the words of Kalhana (1) "if the guilt is not proved, we who are judges in the matter, what are we to do? The question of punishment does not arise even for an ordinary person if his guilt has not been proved". Says Kautilya (2) "whether the complaint is lodged first or last, it is the evidence of witnesses that must be depended upon". It was this anxiety of the lawgivers to see that decisions were based upon proper evaluation of evidence that made them give to the accused numerous chances to appeal. Manu, Narada, Brihaspati and Yajnavalkya deal with this aspect of the law in a detailed manner and have given instructions to the judges, regarding relevancy and admissibility of evidence, which would do credit to any modern law giver. In short, at a time when other nations in the world had nothing like Courts and Law, the Hindu lawgivers had perfected a system of Law of Evidence in several respects far superior to our own. Speaking of Law in the Ancient World, the author of the article in the Encyclopedia Britannica (3) observes "little of course can be found in primitive jurisprudence that corresponds at all to the modern insistence on relevancy, on the competence of witnesses, on the disregard of hearsay statement and so forth. Very few nations in those days knew the difference between trial and punishment". Ours seem to have been one of that very few.

Human evidence about which we are concerned in this chapter is further classified as Witness, Writings and Inference (4). Among these three kinds of human evidence the evidence of witness is dealt with by the lawgivers in great detail. The reason is not far to seek. In those days the art of writing was in infancy and it was not a common property of all. So the courts had to do more with witnesses than documents. Later on however when writing became universal, documents also received the same status. Says Katyayana (5) "when there is writing there should be no ordeal nor witnesses".

Narada (6) discusses in detail the several kinds of documents and their validity in a court of law. "Document", says he, "should be known to be of two sorts-the first in the hand writing of the party himself; (the second) in that of another person, (the former being valid)without subscribing witnesses, the latter requiring to be attested. The validity of both depend upon local usage. That document is said to be valid which is not adverse to the custom of the country, the contents of which answer to the rules regarding pledges and to the kinds of security and which is consistent in import and language. That document is invalid which has been executed by a person intoxicated, by one charged with a crime, by a woman or by a child and that which has been caused to be written by forcible means, by intimidation or by deception". That the examination of documents was in an advanced stage is clear from the following observations of Narada. "If a doubt should subsist as to whether a certain document be authentic or fabricated, its authenticity has to be established by examining the handwriting of the party, the tenure of the document, peculiar marks, circumstantial evidence and the probabilities of the case". To Narada "A writing is superior to witnesses; witnesses are not superior to writings".

The insistence on documentary evidence and the claim made by Narada that documentary evidence is superior to other types of evidence bring Narada to a considerably later date than the other lawgivers. Sukra (7) deals with what the previous lawgivers have to say on the subject. In his own words

"In ancient times writing was created by Brahma to remind what happened as the symbol or representative of vocal sounds and tones. Documents are of two kinds - for describing works or deeds and for keeping accounts of income and expenditure. Each however has been greatly diversified through varieties of usage and a Jayapatra or a document of judgment is one that contains an account of the case or suit brought forward, arguments for and against, and also the decision. An Ajna Patra or documents of order is one by which functions are entrusted to tributary chiefs, officers or governors of districts. A Prajna Patra or document of notification is that by which priests, sacrificers, worshippers and other venerable men are informed of the rites they have to perform. A Sasana Patra or a document of public notice and regulations for the people is that which contains the King's own signature and date and begins in the following way:- "Hear ye all, or Notice is hereby given that, etc., such and such things must be done by you, etc".A Prasad Patra or document of pleasure is that by which the King confers lands, etc. on persons satisfied with their services, valour etc. Bhogya Patra or the document giving right to enjoyment, the document giving right to the tribute, and the document giving right to presents or privileges may be for generations or for certain stated periods. The brothers and relatives who have voluntarily separated themselves from one another frame a document describing the partition. That is called Bhagalekya or partition deed. One should frame a document after giving away or bequeathing houses, lands etc. That is called Dana Patra or deed of gift, which is indestructible and cannot be received back. That document is called deed of sale or purchase, which contains an account of the measurements, values and witnesses of the dealings in houses and lands. A Sadi Patra is that document which contains an account of the things pledged, values received and witnesses in the matter of a transaction which involved the pawn or pledge of movables or immovables. A Satya Lekhya is that agreement which two townships make between themselves while the Samvit Patra is the treaty between two Kings to observe dharma without fighting with one another. A Rina

Lekhya or document of loan is known to be that which contains an account of the witnesses and is framed on the receipt of some money at interest. Suddhi Patra or document of purgation is that which contains an account of witnesses and is framed after some course has been worked out or a penance has been duly performed. A Samayika Patra or business deed is one which individuals frame after combining their shares of capital for some business concern. A document which has not been executed by an assessor or an official or a member of the Court and which is admitted by the opposite party is said to be a deed of compromise. The letters that are written to know of each other's works and circumstances should begin with words of blessing and grace and contain reference or reply to previous affairs. They should not be vague and mysterious but be distinct in letters and words, and should contain the names of themselves and their parents. These should be duly attended with the words of respect in singular, dual or plural number and marked with the year, month, fortnight, day, name and caste of the writers. Ksema Patra is that which begins with obeisance or blessings, which fully explains the affairs and is systematic and is meant for master, servant or those who are to be served. That which contains all these characteristics and describes an attack upon oneself or refers to some pain suffered is called Bhass Patra. Thus have been mentioned in brief the various documents describing deeds or actions together with the characteristic features of each. Now is being described the other class of writings by which account of receipts and disbursements are kept. The documents for keeping accounts are of various kinds and designated under different names according to the differences in amount great or small, values and measurements.

To Sukra (8) a document signed by the King, was more important than the King himself. Says he "the written document with the King's seal is the real King. The King is not a King". Again "the best is the document which bears the King's seal and handwriting". The document written by the Kings is of good validity, while that written by ministers is tolerable. That written by the citizens is inferior. But all are

valid. From the foregoing it is clear that the documents were given the greatest possible consideration in those cases in which they were available. And they were considered superior to the two other kinds of human evidence.

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CHAPTER 14
LAW OF EVIDENCE - WITNESSES

Though documentary evidence was considered superior to witnesses, the reliance on witnesses was more popular. In the words of Sukra (1) "The man, other than self who is aware of the facts of the case is a witness. The witness is of various classes-one who has seen or who has heard of it, each again is divided into two classes-got-up (false) and true. The man by whom facts are seen or heard in the presence of the plaintiff and the defendant may be a witness if he be uniform in statements. The man whose intelligence, memory and ears do not prove defective even after a long time deserved to be a witness". The man whose truthfulness has been tested deserved to be a witness. In the words of Narada (2) "He should be considered as witness who has witnessed deed with his own ears or eyes; with his ears, if he has heard another man speaking; with his eyes, if he has seen something himself".

Great care was taken in the selection of witnesses. Says Vyasa (3) "Persons endowed with a sense of justice, persons having sons, persons born in distinguished families, persons of pure extraction, truth tellers, persons performing the rites prescribed in the Vedas and Smritis, persons devoid of anger and envy, Srotriyas, persons versed in the Vedas, persons not dependant on others, persons residing in the place of birth and people in the prime of manhood should be made witnesses by the wise". Says Vishnu (4), "Descendants of a noble race, who are virtuous and wealthy, zealous in the practice of

religious austerities, having male issue, well versed in the Holy law, studious, veracious, acquainted with the three Vedas and aged, shall be witnesses." Kautilya is brief but to the point. A witness, according to him, "must be reliable, honest and respected".

The lawgivers are not satisfied with the mere enumeration of the desired qualifications of witnesses. They almost tire us out by giving a list of persons who are not qualified to be witnesses. Says Vishnu (5) "the King cannot be made a witness; nor a learned brahmin; nor an ascetic; nor a gamester; nor a thief; nor a person not his own master; nor a woman; nor a child; nor a perpetrator of the acts called sahasa; nor one over-aged (or more than eighty years old) nor one intoxicated or insane; nor a man of bad fame; nor an out-cast nor one tormented by hunger or thirst nor one oppressed by a sudden calamity such as the death of his father or the like or wholly absorbed in evil passions". Narada has perhaps the longest section on "Incompetent witnesses" and he brings so many people under this category that one wonders whether there could be many competent to be witnesses. Says Narada (6), "Those must not be examined as witnesses who are interested in the suit, nor friends nor associates, nor enemies, nor notorious offenders, nor persons tainted (with a heavy sin). Nor a slave, nor an impostor, nor one not admitted to Sraddhas, nor a superannuated man, nor a woman, nor a child, nor an oil-maker, nor one intoxicated, nor a madman, nor a careless man, nor one distressed, nor a gamester, nor one who sacrifices for a whole village. Nor one engaged in a long journey, nor a merchant who travels into transmarine countries, nor a religious ascetic, nor one sick, nor one deformed, nor one man alone, nor a learned brahman, nor one who neglects religious customs, nor a eunuch, nor an actor. Nor an atheist, nor a vratya, nor one who has forsaken his wife or his fire, nor one who makes illicit offerings, nor an associate who eats from the same dish (as oneself), nor an adversary, nor a spy, nor a relation, nor one conceived by the same womb. Nor one who has formerly proved as an evildoer, nor a public dancer, nor one who lives by poison, nor a snake-catcher, nor a prisoner,

nor an incendiary, nor a ploughman, nor the son of a sudra woman, nor one who has committed a minor offence. Nor one oppressed by fatigue, nor a ferocious man, nor one who has relinquished worldly appetites, nor one penniless, nor a member of the lowest caste, nor one leading a bad life, nor a student before his course of study is completed, nor an oilman, nor a seller of roots. Nor one possessed by a demon, nor an enemy of the King, nor a weather-prophet, nor an astrologer, nor a malicious person, nor one self-sold, nor one who has a limb too little nor a Bhagavrithi (7). Nor one who has bad nails or black teeth, nor one who betrays his friends, nor a rogue nor a seller of spirituous liquor nor a juggler, nor an avaricious or cruel man, nor an enemy of a company (of traders) or of an association(of clansmen). Nor one who takes animal life, nor a leather manufacturer, nor a cripple, nor an outcast, nor a fogger, nor a quack, nor an apostate, nor a robber, nor one of the King's attendants. Nor a brahman who sells human beings, cattle, meat, bones, honey, milk, water, or butter, nor a member of a twice-born caste guilty of usury. Nor one who neglects his duties, nor a Kulika, nor a bard, nor one who serves low people, nor one who quarrels with his father, nor one who causes dissension. These are the incompetent witnesses".

It is rather hard to understand the logic of such exclusion. As a matter of fact Narada has clubbed together good and bad men and called them incompetent witnesses. It is quite likely that some of these are later interpolations by interested parties. Narada himself has given his reason for considering certain persons as incompetent witnesses. Says he (8), "A child would speak falsely from ignorance, a woman from want of veracity, an impostor from habitual depravity, a relative from affection, an enemy from desire of revenge". His omission to give reasons for considering many others as incompetent witnesses proves our theory that many of those are later additions. Sukra (9) echoes Narada and others when he says "The child because of his ignorance, the woman because of mendacity, the forger because of sinful habits, the relatives because of their affection, and the enemies because of their rivalry. The man who belongs to an inferior caste or race

because of his vanity, the cheat because of his stupidity and the servant because of fees and bribes-these people are not to be witnesses. Not also those with whom one has money transaction, with whom one has marriage relations and those with whom one has educational relations. If somebody is prejudiced with the srenis (communities) or vargas (groups) of men, his evidence is not to be taken".

Even Kautilya who is brief when he speaks about a competent witness is elaborate when he discusses the nature of incompetent witnesses. Says, he (10), "Wife's brothers, co-partner, creditors, debtors, enemies, maimed persons or persons punished by the Government shall not be taken as witnesses. Likewise persons legally unfit to carry on transactions, the King, persons learned in the three Vedas, persons depending for their maintenance on villages, lepers, persons suffering from bodily eruptions, out-caste persons, chandals, persons of mean avocation, the blind, the deaf, the dumb, egotistic persons, females or government servants shall not be taken as witnesses excepting in case of transactions in one's own community".

It must however be pointed out that most of those regulations applied only to witnesses in civil disputes. In criminal cases, many witnesses considered incompetent for purposes of civil disputes were considered competent and instances are not wanting to prove convictions which were based upon such otherwise incompetent witnesses. Says Usanasa (11), "A slave, a blind person, a deaf person, a leper, a woman, a minor, an old person and the like, even these, if uninterested, are deemed competent witnesses in a Sahasa". While Manu (12) observes "on failure of qualified persons, evidence may be given in such cases by a woman, by an infant, by an aged man, by a pupil, by a relative, by a slaver or by a hired servant".

Narada speaks of eleven types of witnesses. In his own words, "eleven descriptions of witnesses are distinguished in law by the learned. Five of them are termed 'appointed' and the other six 'not appointed'. A subscribing witness (13), one who has been remanded, a casual witness, a secret witness

and an indirect witness, these are the five sorts of appointed witnesses. The witnesses, not appointed by the party himself have been declared sixfold; the village, a judge and a King, one acquainted with the affairs of the two parties and one deputed by the claimant. In family quarrels, members of the family shall be witnesses.

Generally speaking, a minimum of three witnesses was fixed for all cases. Says Yajnavalkya (14), "witnesses ought to be more than three", while Narada (15) maintains, "the witnesses shall not be less than three in number". Vishnu observes, "Nor can one alone be made a witness". Kautilya says, "It is obligatory to produce three witnesses who are reliable, honest and respected", while Alberuni refers to a minimum of four witnesses. "Never one witness in the case of debt" says Kautilya.

But there were exceptions to this rule of the plurality of witnesses. In secret dealings, a single woman or a single man who has stealthily heard or seen them can be a witness with the exception of the King or an ascetic. Again Vishnu(16) observes that one witness alone would be sufficient if both the parties agreed and if the witness satisfied all the necessary qualifications prescribed. Narada agrees with Vishnu(17) when he says, "by consent of both parties, one man alone may become a witness in a suit. He must be examined in public as a witness, though he has been mentioned as an incompetent witness".Even Alberuni (18) observes, "In case the justice of the deposition of a witness is perfectly established before a judge, he may admit and decide the question on the basis of the deposition of this sole witness,". Says Brihaspati (19) "A single witness even may furnish valid proof, if he is a messenger, an accountant, one who has accidentally witnessed the transactions, or a King, or Chief Judge". Again says Sukra (20) "even one man if virtuous is adequate when approved by both parties".

In selecting the witnesses, great emphasis was laid upon the witness belonging, as far as possible, to the community or guild to which the complainant or the accused belonged. Says

Narada "among the Srenis, the heads of Srenis, among Vargas the heads of Vargas, among outside people, persons living outside and women among women become witnesses". Yajnavalkya (21) observes, "of the same caste, of the same class; failing these all witnesses of any caste or class". Here we hear an echo of the trial by Peers.The moment a witness appeared before the judge, it was the duty of the judge to study his looks and find out whether he was reliable or not. Narada describes the means whereby a false witness could be determined. "He who appears as it were uneasy by reason of the wickedness of his own crimes, shifts from place to place or runs after another person, who suddenly coughs much and draws his breath now and again, who scratches the ground with his feet, who shakes his hands and clothes, the colour of whose countenance changes and whose forehead sweats, whose lips become dry, who looks above and about him and who talks irrelevantly in hurried manner and without being questioned should be known as false witness. Such a wretch should be punished severely" (22). Says Vishnu (23) "A false witness may be known by his altered looks, by his countenance changing colour and from his talk wandering from the subject". In agreement with this, we have in Mrichhakatika (24) the judge saying the following when Charudatta entered the court. 'Good appearance is never without a similar excellent and noble conduct".

The instructions of Narada are followed even to-day. As written by Sarkar (25) in his Law of Evidence: "A careful attention to the demeanour of the witness will always help the examiner to arrive at a correct estimate of his character. There is something about the manner of an untruthful witness which unmistakably betrays him. In the witness box the eyes are of much more importance than the tongue and most judges rely on the former to judge whether a witness is telling the truth. A lying witness will do any thing but keep his eyes still or look candidly in the face of the man he is lying to, but will raise his eyebrow, frown, look on the floor or uneasily about the court, or glare at everything. Witness of a low grade of intelligence when they testify falsely, usually display it in

various ways! In the voice, in a certain vacant expression of the eyes, in a nervous twisting about in the witness chair, in an apparent effort to recall to mind the exact wording of their story, and especially in the use of language not suited to their station in life. On the other hand, there is something about the manner of an honest but ignorant witness that makes it at once manifest to an experienced lawyer that he is narrating only the things that he has seen or heard. The expression of the face changes with the narration as he recalls the scene to his mind; he looks the examiner full in the face; his eye brightens as he recalls to mind the various incidents; he uses gestures natural to a man in his station of life and suits them to the part of the story he is narrating and tells his tale in his own accustomed language".

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CHAPTER 15
LAW OF EVIDENCE - OATHS

Examination of witnesses began only after the administration of oaths. Before taking an oath, the witness had to bathe, come before the village Gods with drenched garments, touch the forehead of his wife and children and then take an oath, which was quite sufficient to stifle in the God-fearing age any tendency to tell a lie. The nature of the oath and its mode of administration varied from community to community. On taking oaths, Kautilya (1) says the following. "A witness shall be taken before brahmins, vessels of water and fire. A brahmin witness or a vaisya witness shall be told, tell the truth"; A kshatriya or a vaisya witness shall be told thus; "if you utterest falsehood, thou do not attain the fruit of the sacrificial and charitable deeds; but having broken the array of thy enemies in war, you do go a beggar with a skull in thy hand". A sudra witness was thus addressed, "whatever thy merits are, in thy former birth or after thy death, shall they go thee the King and whatever sins the King may have committed, shall they go thee if you utterest a falsehood; fines shall also be levied on thee, for facts as they have been heard or seen will certainly be subsequently revealed". Says Vishnu (2), "a brahmin, he must address thus 'Declare'. A kshatriya he must address thus 'The kins, grain and gold shall yield thee no fruit if thou were to give false evidence". A sudra he must address thus, "Thou shall have to atone for all possible heavy crimes if thou were to give false evidence". Narada (3) puts it briefly as "Let him cause a priest to swear by truth, a kshatriya by his riding animal and weapons, and vaisya by his cows, grain or gold, a sudra by all sorts of crimes".

After administrating the oath, it was open to the judge to tell the witness about the supreme importance of speaking the truth and the evils flowing from speaking the untruth. Says Narada (4) "by ancient sacred texts, extolling the excellence of truth, and denouncing the sinfulness of falsehood, let him inspire them with deep awe". Whatever places of torture await the killer of a brahmin and other great criminals and the killers of cow and other minor offenders, those places of abode are ordained for a witness who gives false evidence. And the fruit of every virtuous act he has done from the day of his birth to his dying day shall be lost by him. In Mrichhakatika (5) the guild president is made to observe "by speaking truth happiness is obtained in this wourld an no sin is committed when truth is spoken. Truth is a word of two sacred syllables and don't hide truth by uttering a lie'. Again says Manu (6),"By truthfulness a witness is purified, through truth his merit grows, truth must therefore be spoken by witnesses of all castes". The Gods are acquainted with no better man in this world than him of whom his conscious soul has no distrust, when he gives evidence. Says Gautama (7), "by false evidence concerning small cattle a witness kills ten, (by false evidence) regarding cows horses, men or land, in each succeeding case ten times as many (as in the one mentioned before), or by false evidence regarding land the whole (human race), hell (is the punishment) for a theft of land. (By false evidence) concerning water (he incurs) the same (guilt) as (for an untruth) about land, likewise by false evidence regarding (criminal) intercourse. (By false evidence) regarding honey or clarified butter (he incurs) the same (guilt) as (by an untruth) about small cattle, by false evidence about clothes, gold, grain and the Veda, the same as (by an untruth) about kin, and by false evidence regarding a carriage (or a beast of burden) the same as (by an untruth) about horses". A witness must be reprimanded and punished for speaking an untruth. It was the duty of the judges to receive the witnesses kindly and make them feel quite at home by carrying on familiar conversation. The witnesses in their turn were expected to be very polite; they had to remove their turban and shoes before entering into

the court. Some times conveyances were provided by the court to bring the witness to the court. Kautilya (8) speaks of small allowances being given to the witnesses for their heavy work. Fees for witnesses shall cover 1/8 of a pana. Provision proportional to the amount sued for may also be made for the expenses incurred by witnesses in their journey. The defeated party shall pay these two kinds of costs. Some times even seats were offered to the witnesses. In Mrichhakatika (9), when the mother of Vasantasena enters the court, the judge is made to say, "Madam, you are very welcome, pray be seated". In fact the judge offered a seat even to Charudatta, who was the very accused in the case.

Some lawgivers maintain that the witnesses were to be examined in the order of their castes. This however does not appear to have been quite common. After examining all the witnesses, the judge could come to a decision. "That plaintiff whose statement the witnesses declare to be true shall win the suit! But he whose statement they declare to be wrong, shall certainly lose it. If there is contradictory evidence, let the King decide by the plurality of witnesses – if equality in number, by superiority in virtue by the evidence of the best among the twice born". Says Narada (10)"where there is conflicting evidence, the plurality of witnesses decides the matter. If the number of witnesses is equal, the testimony of those must be accepted who are possessed of a superior memory" (229). On this point, says Kautilya (11) "If witnesses differ, judgement may be given in accordance with the statements of majority of pure and respectable witnesses; or the mean of these statements may be followed or the point under dispute may be taken by the King". Severe punishments were provided for witnesses who gave false evidence. Even plaintiffs and defendants who produced false witnesses to support their cause were severely dealt with. Says Kautilya, "If in course of seven nights witnesses are found to have unanimously made a false concert among themselves, a fine of 12 panas shall be levied. If they are thus found in the course of the fortnight, they shall pay the amount sued for" Says Manu (12) "A man who without being ill, does not give evidence in cases of loans and the like within three

fortnights shall become responsible for the whole debt and pay a tenth part of the whole as a fine to the King. The witness to whom, within seven days after he has given evidence happens a misfortune through sickness, a fire, or the death of a relative shall be made to pay the debt and a fine. (He who commits perjury) through covetousness shall be fined one thousand (panas), (he who does it) through fear, two middling amercement shall be paid as a fine, (if he does it) through friendship, four times the amount of the lowest (amercement). (He who does it) through lust, (shall pay) ten times the lowest amercement, but (he who does it) through wrath, three times the next (or second amercement); (he who does it) through ignorance, two full hundreds, but (he who does it) through childishness, one hundred (panas). They declare that the wise have prescribed these fines for perjury, in order to prevent a failure of justice and in order to restrain injustice. But a just King shall fine and banish (men of) the three (lower) castes (varna) who have given false evidence but a brahmana he shall (only) banish".

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CHAPTER 16
POLICE ORGANISATION IN ANCIENT INDIA

The early Hindu state was essentially a policing State. The protection of the people from internal and external danger was always considered to be the paramount function of the King and sometimes even more important than administration of justice. "The sphere of State action was in the earliest period very limited. The State was then, in fact, what political scientists term a 'Police State'. Security against foreign invasions and the maintenance of internal order summed up the activities of the State. The first step towards a higher type seems to have to have been taken when the State assumed the administration of justice. And as society became more complex with the progress of civilization, the sphere of State activity tended gradually to extend, until about the fifth or sixth century A.D, it embraced almost the entire life of the people. Under Emperor Asoka, the State closely approximated to the highest in every department of life (1).

During the period of the extension of the sphere of State-activity, the power of the State also tended to grow; but State sovereignty in India never became quite absolute. The conception of political sovereignty as "independent, indivisible, perpetual, inalienable power" was never developed here to the same extent as in ancient Greece or in modern Europe"(2). Says Vishnu (3), "A King in whose dominion there exists neither thief, nor adulterer, nor calumniator, nor robber, nor murderer, attains the world of Indra". Thus Danda is the root of the tree, which flowers in Dharma. The State can be

recognized positively by Dharma which is in evidence while Danda maintains its vitality from behind. Danda is the very essence of State relations. No Danda-no State - a Danda less State is a contradiction in terms.

A King almost forfeited his right to rule if he did not guarantee enough protection to his subjects. The Mahabharatha (4) has already been quoted by us in this context. It was thought that without the protecting rod of the King, the whole world would be like the 'creature that cannot become another when the Sun and the Moon do not shine'. Or like the 'fishes in the shallow water', in places safe from molestation where they can fly at one another's throats in a strife'(5).

"How can he be a King who does not protect the subject" asks Somadeva (6). Protection was thought to surpass all legal duties in importance and religious merit. The protection of the subjects is the King's sacrifice (7). When the King protects his people in just ways the skies beneficently shower all benefits. There are several statements in the Jatakas echoing this sentiment of Somadeva. In the Jataka (8) the belief is expressed that "if a King be unrighteous, God sends rains out of season, and in season he sends no rains, and fear of famine, fear of pestilence, fear of the sword-these three fears come upon men". We are also told (9) that under stress of famine, the populace gathered in the courtyard of the palace to reproach the King and to ask him to cause rain to fall. He was told that when it did not rain "former monarchs used to give alms to keep the holy day, to make vows and to let seven days in the chamber on a grass pallet; then the rain would fall"(10). The importance of the protective function of the King is made clear in the following two verses of Manu (11): "The King received his sixth share only in return for the protection he gives, and he receives not merely the sixth of the increase of land, but even a corresponding portion of the increase in spiritual merit among his people, as the result of his protection".

The terms used to indicate the police force were significant. They are called "Kings of the night" again "slayer of thieves". (Nagaraguttika, Coraghataka). In Asoka (12)

inscriptions they are referred to as Chora-rajjukas. In another inscription (13) they are referred to as Caurodharanika (one who is entrusted with the extermination of thieves). In view of the importance of the police force in maintaining order and stability in society we find the lawgivers giving great prominence to the organization of an efficient police force. According to Apastamba (14) "the King shall appoint men of the first three castes, who are pure and truthful, over villages and towns for the protection of the people".

That the police in those days rendered very good service is clear form the testimony of great foreign scholars like Megasthenes and Hiuen Tsang. Speaking of public security, says Megasthenes, "Theft is a very rare occurrence. The simplicity of their laws and their contracts is proved by the fact that they seldom go to law. They have no suits about pledges or deposits, nor do they require either seals or witnesses but make their deposits, and confide in each other. Their house and property, they generally leave unguarded. These things indicate that they possess good and sober sense". This is confirmed by Hiuen Tsang (15) who says "With respect to the ordinary people, although they are naturally light minded, they are upright and honorable. In money matters they are without craft and in administering justice, they are considerate. They dread the retribution of another state of existence, and make light of things of this world. They are not deceitful or treacherous in their conduct and are faithful to their oaths and promises. In their rules of government there is remarkable rectitude, while in their behaviour there is much gentleness and sweetness". Again from the Jatakas (16), we learn that Benares was ruled with justice and equity. The ministers of the King of Benares were just. No false suit was brought to the court and true cases were so scanty that sometime Ministers had to sit idly and go away without finding a single suit. We have again the testimony of Tenbatta regarding the security and safety of the people. Says he "I have not seen a safer road than this, for the Hindus put to death any one who steals a single nut. Again when a fruit drops on the ground no one picks it up until the owner takes it. I heard that once several Hindus passed by the road

and that one of them picked up a nut. The Governor, coming to know of it, ordered a stake to be driven into the ground and its upper end to be cut and fixed on a wooden plank in such a way that a portion of it showed up above the plank. The culprit was extended on it and fixed to the stake, which entered his abdomen and came out by the back; he was left in this posture to serve as an example to the spectators. On the road there are many stakes like this so that passers by may see them and be warned".

Although maximum care was taken by the police to look after the safety and security of persons and property, yet there were cases of theft and robbery. The Jatakas tell us of several such offences. According to the Divyavadhana, Gautama (17), and his followers were attacked six times before they reached Sravasti from Rajagriha. Again Hiuen Tsang (18) tells us that when he visited India the roads were not quite safe. In spite of all this it is no exaggeration to say that the State took as much care as possible to maintain peace and order.

The entire police force was under a separate department controlled by a minister who was a prominent member of the cabinet. According to Kautilya (19) there were three ministers who were responsible for the efficiency of the police department. The Commissioners (Pradeshtarah) or three ministers shall deal with measures to suppress disturbance to peace. Below these ministers were the several Superintendents and Deputy Superintendents of Police who were in turn assisted by inspectors and constables. The constables were generally called watchmen and they appear to have worn a peculiar kind of uniform as we learn from the accounts given about the Koliyans. The number of constables must have been very many, for the entire administration depended upon an able constabulary (20).

The functions of the police in ancient India were mainly three reporting, preventing and prosecuting (21) and it is likely each of these functions was under a separate minister. The Kings in ancient India insisted upon every matter being reported to them and towards that end maintained a costly

establishment. Says Asoka (22), "Everywhere Prativedhakas are posted with instructions to report on the affairs of my people". Megasthenes (23) seems to refer to this class of officers when he says, "The sixth board consists of overseers, to whom is assigned the duty of watching all that goes on, and making reports secretly to the King. Some are entrusted with the inspection of the city, and others with that of the army. The ablest and most trustworthy men are appointed to fill these plans. Even the hunters in forests were entrusted with the task of reporting to the King about the movements of wild tribes and they did this, we are told, through carrier pigeons". Says Kautilya (24) "Hunters with their hounds shall recondite the forests. At the approach of thieves or enemies they shall so hide themselves by ascending trees or mountains as to escape from the thieves, and blow conch shells or beat drums. As to the movements of enemies or wild tribes, they may send information by flying the pigeons of royal household with passes (mudra) or causing fire and smoke at successive distances". In ancient Tibet we are told that reports were sent to the Lamas through arrows and it is possible that such a system existed in India also. Sukra (25) speaks of several kinds of reporters. The King should, "Even without any complaint take up for adjudication cases of chhalas (misdemeanour) apparadhas, felonies and cases in which the King himself is a party, on hearing of these through Suchakas, Flatterers and Stobhakas. A Stobhaka is he who is not appointed by the King, but gives first information of a crime, for the sake of money-a conduct censured by the Shastras. The Suchaka is he who has been appointed by the King to know of other offences and after knowing them informs the King. Thus the reporting department was ever busy moving from place to place to find out matters of importance to be reported direct to the King. This must have enabled the King to test the efficiency of the other two departments.

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CHAPTER 17
POLICE ORGANISATION IN ANCIENT INDIA - PREVENTION OF CRIMES

More onerous were the duties of those serving in the department concerned with the prevention of crimes. On them depended the peace and security of the kingdom. As a matter of fact the officers of this department were made personally responsible for the losses sustained by the people on account of thieves and robbers. Says Gautama (1) "Having recovered property stolen by thieves, he shall return it to the owner. But if the property is not recovered he shall pay its value out of his own purse or the treasury". Says Apastamba (2),"Their servants shall possess the same qualities. They must protect the town from thieves in every direction to the distances of one yojana.They must protect the country to the distance of one krosa from each village. They must be made to repay what is stolen within these boundaries". Again says the Agni Purana(3) "The King should pay to the owner the price of an article stolen by a thief and re-imburse himself out of the salaries of police officers".

If the theft was committed during a journey from one village to another, then the officer called 'Vivitadyaksha' had to make good the loss. Says Kautilya (4) "Whatever of their merchandise is stolen or lost in the intervening places between any two villages shall the superintendent of pasture lands make good. If there are no pasture lands in such villages, the officer called 'Chorarajjuka' shall make good the loss. If the loss of merchandise occurs in such parts of the country as are not provided even with such security, the people in the boundaries of the place shall contribute to make up the loss. If there are no

people in the boundaries, the people of five or ten villages of the neighbourhood shall make up the loss". This strange but laudable principle of fixing up the responsibility upon the police persisted for a long time (5). Shershah, the great Afghan ruler who anticipated Akbar in several things enforced this rule. The Mukadams, as the village police officers were called, were compelled to find out the thieves and if they failed they were bound to make good the loss. In cases of murder, the Mukadam of the village was even hanged if the accused was not found (6). The Ain-i-Akbar (7) observes, "If the murderer is not discovered the inhabitants of the town or quarter where the murder was committed shall endeavour to find him and in default they are subject to whatever fine the judge might think it proper to inflict. Thevenot (8) says that Kotwal was answerable for thefts and robberies in the town and the Faujdar in and around the town. As a result, during the early Mughal rule there was perfect safety and security. Says Abbas (9), "A decrepit old woman might place a basketful of gold ornaments on her head and go on a journey and no thief would come near her for fear of punishment which Shershah inflicted". Again says Nizam-u-Dhin (10), "Such was the safety of the highway that if any one carried a purse full of gold pieces and slept in the desert for night there was no need for keeping watch".

This system was not based upon any suspicion of the police, for as will be shown later the police were looked upon by the magistracy with great respect and most of the police cases ended in conviction. "While today," says Sir Cecil Walsh, "Indian judges view with distrust the work of the subordinate magistrates and the police, it was the very reverse in those days"(11). As means of communication had not sufficiently developed, it was quite easy for a vigilant constable to catch hold of the offender and if he did not, it was thought that he was indifferent to his work and some times, as in the Mughal period, it was even thought that the police might have connived at it. Thus the system was not harsh as it appears to a casual observer.

In this department the lowest rung was occupied by the watchman. There were many watchmen posted in all important places. Says Sukra (12), "The King should rotate the watchmen every day. The outpost should be built by the police at the mouth or end of the line of houses. The King should hear reports of their work. The watchman was to note the new arrivals and departures within his jurisdiction. For the prevention of stealing, the watchman of a particular street was expected to move in the street at an interval of half a Yama. Manu (13), wants a police station with fairly large number of constables to be located in every important centre. "Let him place a company of soldiers, commanded by trusty officer in the midst of two; three, five or hundreds of villagers (to be) a protection of the kingdom". Again says Manu(14) "Assembly houses, houses where water is distributed or cakes are sold, brothels, taverns and victualler's shops, cross roads, well-known trees, festive assemblies and play houses and concert rooms, old garden forests, shops of artisans, empty dwelling, natural, artificial grove, these and the like places, the King shall cause to be guarded by companies of soldiers, both stationary and patrolling, and by spies, in order to keep away thieves". Thus watchmen were stationed everywhere. Of these the village watchmen enjoyed higher status and their work was at once heavy and responsible. Their work was to keep watch at night and to find out all arrivals and departures, observe all strangers and report all suspicious persons to the Patil. The watchman was likewise bound to know the character of each man in the village, and in the event of theft being committed within the village bounds; it is his business to detect the thief. He is enabled to do this by his early habits of inquisitiveness and observation as well as by the nature of his allowances, which being partly a small share of grain and similar property belonging to each house. He is always on the watch for ascertaining his fees and always in motion to collect them (15). If a theft or robbery was committed, he had either to detect the culprit or to trace his footsteps to a neighbouring village; otherwise he was compelled to make good the loss (16).

These village watchmen were controlled and guided by the District Superintendents of Police (Pradesika) who were touring officers. Asoka (17) refers to them in Rock Inscription III where a D.S.P. is spoken of as the Chief Officer of the Police with his own staff of Gopas and Sthanikas to assist him in tracing thieves from outside the province. He was even empowered to levy fines and inflict corporal punishments on offenders. In Kalhana's Raja Tarangini (18) we have a reference to an officer called Pradesikesvara who must have been the same as 'Pradesikas'of Asoka. By far the most over-worked police officer in ancient India was the Nagaravyavaharika or the City Superintendent of Police.

It was his duty to keep a vigilant watch during nights. Says Kautilya (19),"the interval between six natikas (22/5 hour) after the fall of night and six natikas before the dawn shall be the period, when a trumpet shall be sounded prohibiting the movement of the people. The trumpet having been sounded, whoever moves in the vicinity of royal buildings during the first or the last Yama (3 hours) of the period shall be punished with a fine of one pana and a quarter; and during the middle most Yamas with double the above fine and whoever moves outside shall be punished with four times the above fine". Again "when the officer in charge of the city does not make a report to the King of whatever nocturnal nuisance of animate or inanimate nature has occurred or when he shows carelessness (in the discharge of his duty), he shall be punished in proportion to the gravity of the offence. He shall make a daily inspection of the reservoir of water, of roads, of the hidden passages for going out of the city, for walls and other defensive works. He shall also keep in his safe custody whatever things he comes across as lost, forgotten or left behind by others". One can better appreciate the duties of the Nagaravyavaharika by knowing the duties of the Kotwal in the Mughal period. The duties of the Kotwal as defined by Abdul Fazl were essentially the same as those prescribed for the Nagaraka or Town Prefect in the Hindu Law Books. The Kotwal was expected to know everything about everybody. In order to acquire such knowledge, he was bound to employ spies or detectives in

modern language, to keep up registers of houses and persons and to watch the movements of strangers. He was responsible for the regulation of prices, and use of correct weights and measures. It was his duty to take charge of the property of any deceased or missing person who had left no heir. In short an energetic Kotwal could always find plenty of occupations (20). Sometimes the Kings sent the chief city police officer on strange errands. In Vikrama Vasiyam, we find the King directing the police officer to bring at any cost the gem, which had been taken away by a vulture. This department made all possible efforts to strike fear in the minds of the possible offenders and there can be no doubt about the fact that it succeded.

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CHAPTER 18
POLICE ORGANISATION IN ANCIENT INDIA - PROSECUTION

The third department of police was in charge of tracing out the offenders and bringing them before the magistracy for being punished. This department was ever active, for no offender could be left unpunished. It was a sin to leave the guilty escape unpunished. "Kautilya holds that there shall be no acquittal for an offender"(1). The members of this department were experts in the art of detection and they had the power of arresting people even on suspicion. Says Kautilya (2), "persons whose family subsist on slender means of inheritance; only of themselves, but also of their family; who conceal their own avocations and call; who have taken themselves to such luxurious modes of life as eating flesh and condiments; drinking liquor, wearing scents, garlands, fine dress and jewels; who have been squandering away their money, who constantly move with profligate women, gamblers or vintners; who frequently leave their residence; whose commercial transaction, journey or destination is difficult to understand, who travel alone in such solitary places as forests and mountainous tracts; who hold secret meetings in lonely places near to or far from their residence; who hurry on to get their fresh wounds or boils cured; who always hide themselves in the interior of their houses; who are excessively attached to women; who are always inquisitive to gather information as to the women and property of others; who associate themselves with men of condemnable learning and work; who loiter in

the dark, behind walls or under shades; who purchase rare or suspicious articles in suspicious times or places; who are known for their inimical dealings; whose caste and vocation are very low; who keep false appearance; put on different caste signs; who change their ancestral customs under false pressure; whose notoriety is already marked; who though in charge of villages are terribly afraid of appearing before the Prime Minister and conceal themselves or go elsewhere; who pant in fear while sitting alone; who show undue agitation or palpitation of heart; whose face is pale and dry while the voice is indistinct and stammering; who always move in company with armed men; or who keep threatening appearance- these and other persons may be suspected to be either murderers or robbers or offenders guilty of mis-appropriations of treasure trove or deposits or to be any other kind of knaves subsisting by foul means secretly employed". And they could be arrested by members of this department. In arresting offenders, the police had to be very prompt for "three days after the commission of a crime, no suspected person shall be arrested in as much as there is no room for questions unless there is strong evidence to bring home the charge"(3). The police could not arrest the following: "those who go out at night in order to attend to the work of midwifery or medical treatment, or to carry off a dead body to the crematorium or burial ground, or those who go out with a lamp in hand at night, as well as those who go out to visit the officer in charge of the city, or to find out the cause of a trumpet sound (turyapreksha) or to extinguish the outbreak of fire, or under the authority of a pass, shall not be arrested"(4).

Before taking the offender to the court, the officers tried their best to force the offender to confess the guilt. Many harmful methods were employed, for in those days a confession before a police officer was not held invalid and more often than not the decision of the magistrate largely depended on the confession. Theft and robbery seem to have been the most ordinary cases that came before the court for adjudication. Very often an innocent man was arrested on a charge of 'theft' and brought before the court. Infliction of torture with a view

to elicit confession of a crime was prevalent (5). A simple rustic (janapa) perfectly innocent man, is arrested by the King's men (Purisa) on a charge of theft of the Queen's pearl necklace and is forced to plead guilty of the charge only to avoid the crushing and ruthless blows administered to him. "If I deny the charge, I shall die with the beating I shall get from these ruffians. I had better say I took it". Thus the man had to confess. And when brought before the King, he naively implicated the treasurer, the latter in the same manner implicated the chaplain, he the chief musician and then a courtesan who utterly denied ever having received the necklace. The story presents a very interesting insight into the mentality of these under-trial prisoners who, when alone in the lock-up, give out the reasons for implicating one another in the charge, of which all of them were innocent. The treasurer questions the rustic who answers: "Worshipped Sir, that never been mine to own ought so valuable even as a stool or bedstead that was not rickety, I thought that with your help I should get out of this trouble". Then in answer to the chaplain's questions, the treasurer says "I only said so because I thought that if you and I stand together, we can soon put the matter right". Then the chaplain to the musician "I only said I did because I thought you would help to make the time pass more agreeably". Lastly the musician (a jolly fellow) to the courtesan: "Why be angry my dear? We five have got to keep house together for a bit; so let us put a cheerful face on it and be happy together". Thus extracting a confession became a special art and the members of this department were experts. Torture of various grades of cruelty were employed (6) "Those whose guilt is believed to be true shall be subjected to torture, but not women who are carrying or who have not passed a month after delivery". "There are in vogue" says Kautilya (7), "four kinds of torture, six punishments, seven kinds of whipping, two kinds of suspension from above and from below water tube". As to persons who have committed grave offences the forms of torture will be nine kinds of blows with a cane, 12 beats on each of the buttocks, 28 beats with a stick of the tree 32 beats on each palm of the hands and on each sole of the feet two on

the knuckles, the hands being joined so as to appear like a scorpion; two kinds of suspensions, face downwards, burning one of the joints of a finger after the accused has been made to drink rice gruel; heating his body for a day after he had been made to drink oil; causing him to lie on a coarse green grass for a night in winter. These are the 8 kinds of torture". That this was an unjust mode of deciding a case cannot be denied. But we can say that occasions for exercising such powers must have been rare, for these provisions were enough to prevent people even from thinking of offences. This department had the responsibility of appearing before the court and arguing out the case to the satisfaction of the judge.

We will not be fair to our ancient lawgivers if we go with the impression that the whole organization was inhuman, as a study of the section on tortures would lead us to believe. Many persons could not be tortured even if they had committed an offence. Says Kautilya (8) "ignoramus youngsters, the aged, the afflicted, persons under intoxication, lunatics, persons suffering from hunger, thirst or fatigue from journey, persons who have just taken more than enough meal, persons who have confessed of their own accord and persons who are very weak-none of these shall be subjected to torture". The officers were subject to severe punishment if they violated any of the rules of torture.

Like the judges, the police officers were also in constant dread of punishment for dereliction of duty. Says Kautilya (9) "Those watchmen who stop whomever they ought not to stop or do not stop whomever they ought to stop, shall be punished with twice the amount of the fine levied for untimely movement. When a watchman has carnal connection with a slave woman, he shall be punished with first amercement; with a free woman, middle most amercement; with a woman arrested for untimely movement, the highest amercement; and a woman of high birth, he shall be put to death" Such punishments were inflicted on all police officers and this must have certainly prevented them from exceeding their limits.

People in those days were expected to assist the police in all possible ways and very often a whole village was made liable for a particular theft if the thief was not found out. Even officers who did not belong to the police department had the power of arresting law-breakers. In fact, Kautilya even refers to presents being given by the Government to those people who caught hold of thieves. Says he (10) 'When a person recovers a local cattle from thieves, he shall receive the promised reward (panitam rupam); and when a man rescues a foreign cattle (from thieves) he shall receive half its value". Again, says Kautilya that the superintendent of shipping could himself arrest the following persons-"Any person who is abducting the wife or daughter of another, one who is carrying off the wealth of another, a suspected person, one who seems to be of perturbed appearance, one who has no baggage, one who attempts to conceal or evade the cognizance of the valuable load in one's hand, one who has just put on a different garb, one who has renounced one's usual garb, one who has just turned ascetic, one who pretends to be suffering from disease, one who seems to be alarmed, one who is stealthily carrying valuable things or going on a secret mission, or carrying valuable things or carrying weapons or explosives (agniyoga), one who holds poison in one's hand and one who has come from a long distance without a pass shall all be arrested". Speaking of the duties of the people with reference to control of crimes, says Kautilya "Masters of houses shall make a report of strangers arriving at or departing from their houses; otherwise they shall be guilty of the offence of theft committed during that night. Even during safe nights they shall be fined three panas. Way-farers going along a high road shall catch hold of any person whom they find to be suffering from a wound or ulcer or possessed of destructive instruments or tired of carrying a heavy load, or timidly avoiding the presence of others, or indulging in too much sleep, or fatigued from a long journey, who appears to be a stranger to the place in localities such as inside or outside the capital, temples of Gods, places of pilgrimage or burial grounds." Again Sukracharya (11) makes

it clear that the whole village was expected to be vigilant about the safety of the people-they were expected to form an association of public safety and report all matters to the authorities concerned. These associations had even the power of arresting offenders in the absence of the police.

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CHAPTER 19
POLICE ORGANISATION IN ANCIENT INDIA - THE RIGHT OF PRIVATE DEFENCE

There is a common saying in the village, even today to the effect "If a hungry man took a handful from a field it was no theft". This explains in a very brief but clear manner the fundamental principle of self-defence. The origin of this right can be traced back to the Puranas. (1). According to the Puranas what the repeller does is moral and nothing could be an offence when the mental element was absent. Thus in ancient India people had maximum possible right of private defence. Says Manu, "Twice born men may take up arms when they are hindered in the fulfillment of their duties, when destruction threatens the twice born castes in evil times"(2).

In their own defence, in a strife for the fees of officiating priests and in order to protect women and brahmanas; he who (under such circumstances) kills in the cause of right, commits no sin. One may slay without hesitation, an assassin who approaches (with murderous intent), whether (he be one's) teacher, a child or an aged man, or a brahmana deeply versed in the Vedas. Again says Vishnu (3), "Anyone may unhesitatingly slay a man who attacks him with intent to murder him, whether his spiritual teacher, young and old, or a brahmana, or even (a brahmana) versed in many branches of sacred knowledge. By killing an assassin who attempts to kill, whether in public or in private, no crime is committed by the slayer; fury recoils upon fury". Assassins should be known to be of seven kinds; such as try to kill with sword, or with poison, or with fire, such as raise their hand in order to

pronounce a curse, such as recite a deadly incantation from the Atharva-Veda, such as raise a false accusation which reaches the ears of the King. It is of significance to note that a person could even kill a brahmin in the exercise of his right of private defence although even the judges had no power to order the execution of a brahmin. The right was not to be misused for as Kulluka observes, no one had the right of killing another unless his own life was in danger. (4).

It may however be noted that the lawgivers themselves differ fundamentally regarding the right of self-defence. In the words of K.P.Jayaswal (5) 'yet the difference is marked between the two schools. While the plea would only mitigate the offence in the Artha Shastra, Yajnavalkya accepts it as entitling total excuse". The plea of self-defence in murder and grievous hurt is totally absent in the Artha Shastra and strange enough, also in Yajnavalkya. The omission might have been due to his closely following, from the beginning to the end, the arrangement of the Artha Shastra. But, it was an important law repeated prominently in the Dharma Shastras and the Manava. A careful lawyer like Yajnavalkya could not have made a mistake on the question. It seems that the law as administered did not accept the theory fully. The Artha Shastra school probably thought that there is an element of intention present; and it is unscientific and dangerous to accept the theory as a ground for total excuse. They relegated it to the domain of ordinary nyaya or consideration of justice and equity by the court. According the their system, an act in self-defence was a ground for mitigation, and had to be examined in each case on merits. A general law on the subject was impossible. Even the lawyers of the Dharma school felt the difficulty of a cut and dry law on the subject. Sarvajna Narayan commenting on Manu says, that the defender must not wound such a man 'excessively'. And Kulluka that the condition is that one must be unable to save himself by running away. In other words, exceptions to this law of exception had to be made, a course which has been followed by our present day courts. The Dharma law extends the exception to the defence of property (Kshetra), and of wife, evidently as she is part of the defender's body.

The Manava gives it the greatest extension (VIII 348- 351). He extends it to a national revolt and revolution (343), when the Aryas did not allow their common and religious liberty; to the protection of a brahmin by an outsider (349); and to a battle of 'dakshina', the significance of which is not clear. He expounds that even a preceptor, a minor, an elder, or a brahmin could be killed with impunity in the exercise of the right of private defence; no one was too sacred when the right was concerned, no sin, no guilt; i.e. penalty of penance or law followed the result; 'fury recoils on fury'. The right is not affected, whether it is exercised in an open place or otherwise (351).

The salary of the police officers must have been very high. The chief police officer according to Kautilya received a fabulous salary of 24,000 Panas per annum. In a Vijayanagar inscription (6) we are told that a prefect of the police was given a salary of 12,000 panas per annum. It is interesting to note that this amount was derived from the proceeds of the brothels. The watchman in the villages was paid out of the taxes paid by the villagers and it is possible that many of them received their salaries in kind. Again we are told that all these officers were entitled to pension and leave for a certain fixed period with salary. It was the duty of the King to protect the members of the family of deceased officers (7). Says the Niti Valkya Amrita (8), "The King incurs a debt if he does not maintain the relations of an officer who has died in the service of the State". That the situation in ancient India was better than today would be clear from the following extract from a book on "Crime in India" by a police officer (9). "The pay of the police themselves is inadequate, and has not been everywhere increased to correspond with the general rise in the cost of living and the multiplication of the duties now assigned to them". 'The Sub Inspector', so runs a recent official report, 'is the pivot around which the force revolves. An efficient Sub-Inspector generally means an efficient police station. Upon his shoulders lie heavy responsibilities and he is met at every turn by temptation to dishonesty. Yet the Sub-Inspector when he emerges from the probationary stage is given a salary which barely suffices to

secure a good house in Bombay or a chauddeur. From him the public expects education, breeding, intelligence, initiative, integrity and loyal service. All these attributes the public should expect, but they must be prepared to pay for such qualities in their servants'.

It is necessary to observe here that the police in ancient India could count upon the support of the public far more than today. Today the public look upon the police with suspicion and the police do not get the necessary amount of public co-operation. From what has been said above it is clear that the police did their best to maintain peace and order. In commenting on their work we should not forget that very often they had to deal with very difficult cases. Says the Silappadikaram (10) "mantra, daive, omen, drugs, trickery, place, time, and instrument are the eight aids employed by low persons pursuing the ignoble profession of thieves. If you are deceived by this man's drugs you will expose yourselves to the great wrath of the renowned King. If thieves utter mantra and meditate upon it, they can become invisible like the Gods. If they perform feats of making Gods appear before them immediately then, they can show in their hands the stolen objects and yet walk slowly away. By stupefying us with their drugs they can make us sit in the same place; unless a good omen presents itself they do not steal, however valuable a thing, even if it easily falls into their hands. If they resort to magic they can deprive even Indra of the garland on his breast. If they decide upon the place when they will steal a particular object, who could discover them at that place? If they decide upon the time and get possession of the object, even the Gods could not deprive them of it. If they steal valuables by employing their tools, who in this wide world could find them out? To them there is neither day nor night. If you would listen to the science of theft, there is no end to it. Once, a certain thief stayed at the palace gate like an ambassador all the day and when it grew dark, disguised as a woman, he entered without any hesitation in the shadow cast by the lamp, and in an instant removed the garland of diamonds sparkling like the Sun's rays from the crown prince. The awakened prince

found it missing from his shoulders and drew out his sword from the sheath, which the thief clasped and warded off all the blows with it. Tired of this, the prince attempted a hand to hand fight, but the thief expert in his science, escaped after making the prince attack a jewelled pillar. If any one of you has seen him, show to us. Is there any on this earth who is equal to this thief?"

It would be much to say that everything about the police organisation was perfect in ancient India. Instances are not wanting to show that sometimes the police colluded with the offenders and caused great trouble to the people. Bribes were also now and then taken by the police. The Jatakas (11) give us several instances of such behaviour on the part of the police. The police among the Kolyiyans for example were notorious for their violence and extortion. Vatsyayana (12) shrewdly observes that people who wanted the company of prostitutes should keep the police in good humour. Human nature has been ever the same-but there can be no doubt that the State tried its best to find out such offenders.

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CHAPTER 20
POLICE ORGANISATION IN ANCIENT INDIA - DETECTIVE POLICE

In the detection of crimes the spies appear to have played a part more important than the police in ancient India. (1). There was hardly any time in her history nay in the history of the world when espionage of a sort did not exist (2). In fact espionage has always been an appendage of autocracy. Acts of espionage are recorded in the Bible and in the writings of classical authors like Xenophon and Caesar (3). But of all these systems, the Indian system of espionage has the claim to be regarded as at once the most perfect and the oldest (4). The pictographers that are seen on the seals of Harappa and Mohenjo Daro have been taken by some scholars to indicate some kind of cipher writing used by the spies in those days. If this opinion is correct then the history of espionage in India goes back to pre Vedic times (5). That espionage did exist in the Rigvedic period is clear from the several references found in the Rigveda (6). Among the Gods of the Rigveda, Varuna is represented throughout as an autocrat and like all autocrats of olden days, Varuna had numerous spies. In verse 13, hymn 25,we have the following: -"Varuna wearing golden mail, hath clad himself in a shining roll, his spies seated round about". He is represented to have sent his spies to survey the world singing songs in his praise. Indra is reported to have succeeded in defeating the Dasas with the help of his numerous spies. The spies are referred, in the work of Bhasa, Somadeva, Bhamini, Bhavabhuti, Kalidasa and Vishakadatta; again their services are highly commended in the Mahabharata and the Ramayana, in Bhola's Yukti Kalpataru and Kautilya's Artha

Shastra. The great South Indian poet Tiruvalluvar (7) observes, "a monarch without spies is like one without eyes". Says another writer "Let a King consider as his eyes these two things a spy and a book of laws universally esteemed". None however has dealt with espionage in such great details as Kautilya who has more than 3 chapters on espionage alone. Speaking of the creation of spies, he says (8), assisted by the council of his ministers tried under espionage, the King shall proceed to create the spies; spies under the guise of a fraudulent disciple (Kapatika-chchatra), a recluse (Udasthita), a householder (Grihapatika), a merchant (Vaidehaka), an ascetic practicing auserities (Tapasa), a classmate or a colleague (saki), a firebrand (Tikshna), a poisoner (Rasada), and a mendicant woman (Bhikshki). Having encouraged such a spy with honour and monetary rewards, the minister shall tell him, "Sworn to the King and myself thou shalt inform us of whatever wickedness thou findest in others".

One who is initiated in asceticism and is possessed of foresight and pure character is a recluse. This spy, provided with much money and many disciples, shall carry on agriculture, cattle-rearing and trade (Vartakama) on the lands allotted to him for the purpose. Out of the produce and profits thus acquired, he shall provide all ascetics with subsistence, clothing and lodging and send on espionage such among those under his protection, as are desirous to earn a livelihood (Vrittikama) ordering each of them to detect a particular kind of crime committed in connection with the King's wealth and to report of it when they come to receive their subsistence and wages. All the ascetics (under the recluse) shall severally send their followers on similar errands.

A cultivator, fallen from his profession, but possessed of foresight and pure character, is termed a householder spy. This spy shall carry on the cultivation of lands allotted to him for the purpose, and maintain cultivators, etc. as before.A trader fallen from his profession, but possessed of foresight and pure character is a merchant spy. This spy shall carry on the manufacture of merchandise on lands allotted to him for the purpose, etc. as before.

A man with shaved head (munda) or braided hair (jatila) and desirous to earn livelihood is a spy under the guise of an ascetic practicing austerities. Such a spy surrounded by host of disciples with shaved head or braided hair may take his abode in the suburbs of a city, and pretend as a person barely living on a handful of vegetables or meadow's grass (Yavasamushti) taken once in the interval of a month or two, but he may take in secret his favourite foodstuffs (Gudhamismaharam).Merchant spies pretending to be his disciples may worship him as one possessed of preternatural powers. His other disciples may widely proclaim, "this ascetic is an accomplished expert of preternatural powers".

Regarding those persons who, desirous of knowing their future, throng to him, he may, through palmistry, foretell such future events as he can ascertain by the nods and signs of his disciples (angavidya/sishyasambahischa) concerning the works of high-born people of the country viz. small profits, destruction by fire, fear from robbers, the execution of the sedition, rewards for the good, forecast of foreign affairs (videsa pravittivijnanam), saying "This will happen to-day, that tomorrow this the King will do". Such assertions of the ascetic his disciples shall corroborate by citing 'facts and figures'.He shall also foretell not only the rewards which persons possessed of foresight, eloquence, and bravery are likely to receive at the hands of the King, but also probable changes in the appointments of ministers. The King's minister shall direct his affairs in conformity to the forecast made by the ascetic. He shall appease with offer of wealth and honour those who have had some well-known cause to be disaffected, and impose punishments in secret on those who are for no reason disaffected or who are plotting against the King.

Honoured by the King with awards of money and titles, these five institutes of espionage (samsthas) shall ascertain the purity of character of the King's servants. The spies were originally known as the Dutas and often performed the functions of ambassadors.These spies could be either 'open' or 'secret'. Says Niti (9): The open spies were known as Dutas in the Vedic and the Epic times. These played a very important

part in the foreign policy of our ancient Kings. They were important both in the Republics and the Monarchies. The earliest ambassador known to history is Agni. Agni is referred to as a Duta carrying the offerings made to the Gods by the Yajamanas. He is used as a medium of communication between the Supreme Being and the Sacrificers. Sayana (10) commenting on this passage of the Rigveda says:- "In the Yajurveda Samhita we hear of not only a Duta, but also a Prahita". Says Sayana "A Duta is one skilled in obtaining intelligence regarding the condition of the enemy's army and Prahita as one sent by his master".

According to Mahabharata, the Dutas were of three kinds (11). Nisrishtarthah, Paramitharthah and Sazanaharah. Of these three kinds of ambassadors the first was the most important, for they were responsible for studying the movements of the enemy. A classical example of an ambassador of this type is ShriKrishna who was sent by the Pandavas to the Kauravas for negotiations with the former just before the outbreak of the Great War. The second class of ambassadors were dispatched to foreign countries to live on friendly terms with important officers and acquaint themselves with the situation there. They were expected to provide their own States with detailed information about the enemy's country, their military and naval force, fortifications and artillery. The third type was in charge of less responsible matters. The mission over he had to return. It was again a Duta of the Sakyas who was sent to the Sanathagraha of the Lichchavis to seek a Lichchavi princess in marriage to the King of Kosala (12).

The Dutas were selected with great care. Says Mahabharata (13): - "They were selected from among men who were high-born, of good family, eloquent, clever, sweet of speech, faithful in delivering their messages and endowed with good memory. They should in addition be well versed in Shastras, be of good personality, fearless in their actions and possess a sound knowledge of the feelings, attitude and activities of others". Kamandikiya, says in his Niti Valkya Amrita (14), "Dignity, courtesy, tact, courage, resolution and moderation of action are laid down as the chief characteristics

of ambassadors". About the qualifications of the ambassadors, says the Kural (15)-"The qualifications of an ambassador are affection for his relatives, a high birth and possession of attributes pleasing to royalty". Again (16): "Love of his sovereign, knowledge of his affairs and discriminating power of speech before other sovereigns are the three essential qualifications of an ambassador".

The ambassadors were free from danger even in the enemy's court. Says Mahabharata (17): "The King who slays an envoy sinks into hell with all his ministers". Valmiki in Sundara Kanda observes that ill treatment of an ambassador was opposed to the principles of International Law. But an envoy who did not discharge his duties faithfully was often liable to the highest punishment. (18). But of an envoy while discharging his mission offended the enemy certain punishments of a milder nature as deformity of the limb, mutilation, cropping of the hair and such other punishments, were inflicted.

The Charas and Guda purushas of later times were merely an offshoot of these Dutas, employed more inside one's own country rather than in the enemy's. The Kings in those days were always alert to adjust their activities according to public opinion; what really mattered was not the decision of the cabinet or the popular assembly, but the opinion of the public which was often vague and very difficult to be gauged. In the Dharmapada (19) commentary, we read that a King of Benares went out in disguise to enquire whether any of his subjects spoke ill of him. For 100 Kahapanas he learnt from a young brahmin of Benares a mantra, which enabled him to scent the evil thoughts of the people. It was to ascertain the voice of the people that the Kings relied upon this unique organization of espionage. A spy is defined by Tiruvalluvar (20) as one who is able to assume an appearance which may create no harm in the minds of others, who fears no man's face and who never reveals his purpose.

The system of ascertaining public opinion necessitated the organization of a separate department. The Kings often

made use of the spies to reform themselves. In the Ramayana we are told that Rama attached so much importance to public opinion that he even gave up his wife to respect the gossiping tongue of a washerman. They were also used for diplomatic transactions. Many political revolutions, in the history of India were brought about by them. It was with the help of spies that Chandrapradyota of Avanti over-came Udayana, the King of Kausambi (21). The famous drama, 'Mudra Rakshasa' centres round the ingenuity and machination of the spies. It testifies to the remarkable revolution that was brought about by the spies. The spy in 'Mudra Rakshasa' (22) is made to say 'The livelihood of a man comes even from a precarious life taken up with earnestness. I live by Yama that kills all people". Espionage was of particular importance after revolution. The tyrant's life was in danger every moment. Says Kautilya (23), "Hidden in the queen's chamber, his own brother slew King Bhadraq Sena; hiding himself, fried rice with poison. His own cousin poisoned Kasiraya; with an anklet painted with poison; his own Queen killed Vairantya; with a gem of her own bedaubed with poison; his own Queen killed Sauvira; with looking -glass painted with poison; his own Queen killed Jalubba, and with a weapon hidden under her tuft of hair; his own Queen killed Didurath".

The spies were also employed to test the officers.The spies were stationed at cross roads, ruined temples, caityas, ferries, wineshops and brothels. Fleet as the wind, and energetic as the Sun, they were to travel into the camp of the enemy to gather secret information. Spies helped the police a great deal in tracing out the offenders. Says Kautilya (24) "spies under the guise of old and notorious robbers, herdsmen, hunters, or keepers of hounds may mix themselves with criminal tribes living in forests, and conspire with them to attack village or caravansaries which according to previous plan, contain plenty of counterfeit gold and other articles. During the tumult they may be killed by armed men concerned for the purpose or on their securing plenty of stolen treasure, the robbers, may either be made to eat such food as is mixed with the intoxicating juice of madana plant or caught hold of either while sleeping

with fatigue caused by incessant movements or while under intoxication due to the drinking of medical beverage on the occasion of religious festivals".

But the King or his judges were prohibited from deciding a case mainly on the information of a spy (25). They were not completely relied upon. The King had to verify the information form other sources. Let the King receive the information, which a spy has discovered and made known to him until he has examined it by another spy. Of Nala, it is said in Sri Harshas's Naishada Charita (26) that he saw through spies and at the sametime he did not see through spies. Spies who gave wrong information were subjected to severe punishment while those who were true and faithful were protected by the King against official envy and control. Says Sukra (27) "The King who does not punish the false speaking spy becomes the destroyer of the peoples and properties and is called Mlechcha. The King should examine the spy and test his efficiency either directly or by some art, after he assumed the garb of a religious student, of one practicing penance, hermit, lower class man or a magician. The King should protect the spy from both officers and the departments of administration". Sukra then gives certain rules regarding the administration of espionage: - The King should hear from the spies only at night.

- He should be well protected while in their presence.

- He should punish them when dishonest, but carefully protect them during their work.

Espionage need not be considered as an institution of mere historical interest.It was, as stated earlier, an important arm of detection of all kinds of crimes.

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CHAPTER 21
TRIAL AND JUDGEMENT

Elaborate were the rules for the trial of cases in ancient India. Great care was insisted upon in the investigation of both criminal and civil cases. Says Narada (1), "Avoiding carefully the violation of either the sacred law or the dictates of prudence, he should conduct the trial attentively and skillfully. As a huntsman traces the vestiges of wounded deer in thicket by the drops of blood, even so let him trace justice". The judges in the investigation and trial of cases had to do more with documents in civil suits and with witnesses in criminal cases. The law -givers insist upon meticulous care, in the sifting of evidence lest there should be any miscarriage of justice, for, say the law-giver, it is possible that one who has never committed robbery may be charged with robbery (2). An actual robber on account of negligence of the judges may be acquitted of the charge of robbery. As a matter of fact, says Narada (3) one Mandavya, an innocent saint, was tried and declared to be a robber. The story goes that a gang of robbers being pursued by a guard dropped their booty in the habitation of Mandavya, the ascetic and hid themselves in his hermitage. Soon after their pursuers arrived and asked Mandavya in which direction the robbers made good their escape, the saint made no reply whereupon the guards began to search the hermitage and to their surprise discovered the stolen chattels. They conducted the saint to the King who with minimum delay ordered the saint to be tied to the stake and left without food until he died. In spite of this punishment, Mandavya did not suffer. He survived the punishment. The King realizing his own mistake asked for forgiveness. This story is quoted by several law-givers with a view to make the judges understand the need for caution in arriving at decisions. A similar story forms the subject matter

of the great Tamil epic Silappadikaram (4) where a Pandyan King ordered the execution of a rich merchant called Kovalan without exercising the necessary amount of care in arriving at decisions. These stories are often referred to as lessons to the judges and assessors. These stories show that in spite of the commands of the Dharma-Shastras, Kings now and then went wrong. This perhaps lends weight to the view of Sir Henry Maine that the Code of Manu tells us more about what ought to be than what was (5).

Speaking of procedures, says Narada (6), "judicial procedure has four feet, four bases, four means, it benefits four, reaches four, and produces four results. This has been declared. It has eight members, eighteen topics, a hundred branches, three efficient causes, two modes of plaint, two openings, and two issues".Virtue, a judicial proceeding, documentary evidences, and an edict from the King are the four feet of a lawsuit. The virtue is based on truth; a judicial proceeding (rests) on the statements of the witnesses; documentary evidence (rests) on declarations reduced to writing; an edict (depends) on the pleasure of the King. Because the four names, of conciliation and the rest, are adopted, it is said to have four means. Because it protects the four orders, therefore it is said to benefit four. Because it affects criminals, witnesses, the assessors of the courts, and the King, to the amount of one quarter each, it is said to reach four. Because it produces these four -justice, gain, renown and esteem among men, it is declared to produce four results. Because it consists of these eight, the King, his dutiful officer, the assessors of the court, the law book, the accountant's scribe, gold, fire, and water; it is said to have eight members.

Cases were generally tried inside the main hall of the court. Instances, however, are not wanting to show that some times cases were tried in open spaces or forests or in temple buildings. Trials were conducted during day time, generally in the afternoons, and the courts appear to have sat from four to four and a half hours every day (7). Cases that came for trial were of two kinds-attended by a wager or not attended by a wager. A law suit attended by a wager is where either of

the two parties stakes in writing a certain sum which has to be paid besides the sum in dispute in case of defeat (8). In a law suit attended by a wager, he of the two who is cast must pay his stake and a fine when his defeat has been decided. According to Ashahaya the great commentator, the wager must not be laid till the first two stages of the trial-the charge and the answer are over. The wager must be laid by the plaintiff or the defendant. Ashahaya (9) does not say to whom the sum staked has to be paid. According to the Burmese law which was an off-shoot of Manu's code, 10% of the sum staked should be given to the judge and the pleaders and the remainder to the victorious party. It is rather difficult to say at this distance of time what exactly was the motive behind this institution of wagers. It is possible that the law givers thought of reducing the number of cases before the courts, for the existence of wagers must have prevented people from going to courts with false accusations. It was also, as we have seen, a source of revenue, but it is certain this could not have been a very important source.

Says Jayaswal (10), "The State took cognizance of civil grievance where the wronged parties were minors, good, ascetic and other helpless people". Otherwise without a complaint or plaintiff's own motion no case could be entertained. It was illegal if the Government prompted people to come to court as suitors. The actions were classed according to the classification of the 'Eighteen Titles'.The proceedings began with certain questions put by the judge to the suitor coming to his court. This initial procedure we do not know from our early code; but according to Katyayana it was as follows: - The suitor, when his turn arrived, stood before the court and bowed. The judge addressed the suitor in these words:

'What is thy business? What is thy grievance? Fear not! Speak out, O man!'

An address in full conformity with the high traditions of judiciary, and worthy of being followed in any age and civilization. To bring an action and obtain relief, when he

proved his cause, was the suitor's right (11). Judges who tried the patience of the suitors and who would not take down a complaint were liable to punishment.On receipt of complaint from the police or the spies or from individuals wronged, the court issued summons to the accused directing him to be present at the court on a particular day at a particular hour. If the allegation was of a serious nature it was always open to the court to order the arrest of the person or persons accused. Yajnavalkya (12) goes a step further and says that in civil cases if the defendant did not attend the court inspite of the summons, the case was to be judged against him. This holds good even today unless the plaintiff's claim is barred by limitation. The courts, however, had no jurisdiction to arrest the following persons whatever might have been the gravity of the offence. Says Narada (13), "One about to marry, one tormented by an illness, one about to offer a sacrifice, one affected by a calamity, one accused by another, one employed in the King's service, cowherds tending cattle, cultivators in the act of cultivation, artisans while engaged in their occupation, soldiers during warfare, one who has not yet arrived at years of discretion, a messenger, one about to give alms, one fulfilling a vow, one harassed by difficulty, a person belonging to any of these categories must not be arrested, nor shall the King summon him before a court of justice". This comes as a welcome contrast to the severity of the Penal Code. Even the modern procedure codes do not exempt so many from arrests. Excepting the persons enumerated above all others were liable to be arrested. Arrests according to Narada were of four kinds local arrests, temporary arrests, inhibition from travelling and arrest relating to Karma (see Narada 48). One arrested should on no account break his arrest for "if one arrested at a proper time breaks his arrest he shall be punished".

The judge had before proceeding with the trial to see whether the arrest was properly made, for "one arrested while crossing a river or in a forest or in a bad country or during a great calamity or in another such predicament commits no fault by breaking the arrest" (14). If there was the slightest mistake in the arrest of the accused not only was he let off but also

those who were responsible for his arrest were punished.The complainant was expected to put his complaint in writing, and this was generally known as plaint although the expression is used today only with reference to civil cases. Says Kautilya (15), "The year, the season, the month, the fortnight, the date, the nature and place of the deed, the amount of debts as well as the country, the residence, the caste, the gotra, the name and occupation of both the plaintiff, and the defendant, both of whom must be fit to sue and defend, having been registered first, the statements of parties shall be taken down in such order as is required by the case. These statements shall be thoroughly scrutinized. Speaking of plaint, says Narada (16), 'The claimant, after having produced the cause the value of which has been well ascertained, shall cause the plaint to be written. He must have been impelled to proffer his claim, by the nature of the claim, and must be intent on promoting the victory of his cause. The defendant immediately after having become acquainted with the tenor of the plaint, shall write down his answer, which must correspond to the tenor of the plaint. Or let him (the defendant) deliver his answer on the next day, or three days, or seven days later. The plaintiff no doubt duly obtains his victory at once, when fourfold; a denial, a confession, a special plea, and that which is based on a plea of former judgement. A denial is fourfold (being couched in any one out of the four forms hereafter mentioned). 'This is false', or "I do not know anything about it' or 'I was not present at the transaction', or 'I was not in existence at the time when this event took place'. A contradiction, the reverse, a retort, and a friendly tone, in one out of these four forms, should the answer be given, and it should be in conformity with the tenor of the plaint'.

Before the answer to the plaint has been tendered by the defendant, the plaintiff may amend his own statements as much as he desires. They are called the defects of a plaint: (1) if it relates to a different subject; (2) if it is 'unmeaning' (3) if the amount (of the sum claimed) has not been properly stated; (4) if it is wanting in property; (5) if the writing is deficient; (6) or redundant: (7) if it has been damaged. By whomsoever a

claim is raised, whatever and from whomsoever it may have been claimed, from that very person must the claimant receive that very thing, and it must not be (claimed) mutually, or (claimed) from a stranger; Thus 'a claim relating to a different subject' may be of three kinds. Thy friend here has thought in his mind, that I am his enemy. On account of this great intolerance I have impeached thee here. If he omits to state the amount of the thing (claimed) and forgets to aim at brevity, this fault of a plaint is called omission of the amount (claimed), and it should be avoided. Let him avoid improper statements in the plaint (e.g. an accusation which is raised) by a plurality of persons against one single-handed; or (a cause which) is opposed to (the interests of) the city or Kingdom (in which he lives). A plaint in which a mere dot is omitted, or where a word or syllable has been obliterated, or where too little or too much has been written, or which is absurd; such a plaint should be carefully avoided. He should (equally) avoid a plaint which has been destroyed or damaged (by an accident) or which has been soiled by water, oil, or other (liquids), even though the purport and meaning of the plaint be quite plain. A plaint, (which is proffered) though otherwise established is not correct, if it is contrary to established law and usage.

A claim which is proffered in this form- 'I gave this to him while he was in a state of intoxication with fragrance' (a smell of perfume) cannot succeed, because it is contrary to established usage. Where different words are (subsequently) inserted (in the plaint) and where the sense becomes different (in consequence) there the judicial investigation becomes confused, and the evidence itself is thrown into confusion. When the claimant, in a passion, and actuated by one of the immoral motives, such as partiality, makes some special statements, it shall at once be completely reduced to writing on a board or other (writing material). Other statements than those (taken down at first) regarding the plaintiff on a board or other (writing material) shall be removed, after careful consideration by persons, versed in law, (when reporting on the trial) for the information of the King's judge. Let such persons reduce to writing the statements of each party, and

whatever else has been written on the board together with the names of the witnesses, as well as those statements in which both parties concur. Additional statements of the plaintiff (or defendant), which are not contained in the writings of both parties, shall be (subsequently) entered into his (their) declaration. They are called Pratykalita ('what is interposed'). If one deputed by the claimant or chosen as his representative by the defendant speaks for his client in court, the victory or defeat concerns the party himself and not the representative. He deserved punishment who speaks on behalf of another, without being the brother, the father, the son, or the appointed agent; and so does he who contradicts himself at the trial. He, who forsakes his original claim and produces a new one, loses his suit, because he confounds two plaints with one another. A verbal error does not annul the claim in actions of any kind. So if the case related to cattle, or to a woman, or to land, or to a debt, he is liable to punishment, but his claim is not annulled. Where the defendant denies the charge, the claimant has to prove his accusation unless the denial should have been in the form called 'Pratyavaskandana'. What the claimant has fully declared, word for word, in the plaint that he must substantiate by adducing evidence at the third stage of the trial. It was only after a careful scrutiny of the complaint or the plaint were the judges to determine the issues. A plaint was considered useless if it failed to conform even to any one of the conditions enumerated by the lawgivers (17).

Another Smrithi describes a plaint as follows (18): - "It should state the cause of action, it should be intelligible, expressed unambiguously, stated in a form cognizable, uncontradictory, not impossible in regard to place and time, containing the year, the season, the month, the fortnight, the day, the country, the district, the subject matter in dispute, the names of the complainant and the defendant marked with names of their respective ancestors and several Kings, the cause of forbearance, the injury done to the complainant and the names of the original grantor and the grantee".

After carefully going through the plaint the judges ordered the Sadyapala to summon the complainant (19). Says

Katyayana (20) "at the proper time the King should thus interrogate the complainant standing before him in a humble posture.... 'oh! Man, fear not, say what you came for and what your complaint is. From now where and when and on what ground have you suffered'. Thus interrogated what he speaks as his grievance should be considered along with the assessors and the brahmins, and if the complaint be proper, a sealed order or a man should be sent to summon the accused or defendant". The written document with King's seal was often looked upon as the real King. "The best is the document which bears the King's seal and handwriting. The document written by the King is of good validity while that prepared by ministers tolerable. That written by the citizens is inferior but all are valid"(21). Pitamaha (22), however, maintains that proceedings should begin only after the arrival of the defendant.

The defendant and the complainant were made to stand face to face in the courthall. Katyayana observes that the complainant should first address, then the defendant, after them Sadya Pala and lastly, Pradvivaka. When the defendant or the accused appeared before the court, it was the duty of the judge to study him carefully, for according to Narada much could be made out by the very behaviour of the accused in the court. Yajnavalkya thus describes the party in the wrong "he who shifts from place to place, licks his own lips, whose forehead perspires, whose countenance changes colour, who with a dry tongue and stumbling speech talks much incoherently, who does not heed the speech or sight of another, who bites his lips, who by mental, vocal or bodily acts falls into the sickly state, he is considered a tainted person, whether he be a complainant or a witness".

After bringing the defendant before the court, the following procedure was observed in the court. "That which the plaint relates should be recorded in the presence of the defendant and marked with the year, the month, the fortnight, the day, the name and the caste and the like. The Pradvivaka, says Katyayana, should cause to take down the plaintiff's statement as told by him in his own way on a board with a

chalk, then on paper after it has been corrected. "Plaintiff's statements may be corrected", says Narada, "before an answer is given; but when the answer has been received all further corrections should stop". So long may plaintiff cause to be entered in the plaint whatever matters he wishes.

The plaint being thus written, the answer of the defendant should be taken down equally carefully. It was however always open to the judges to give time to the defendant to prepare his answer, if he so desired. But the defendant had to meet every point raised by the plaintiff. In the words of Narada, "Men versed in law consider that an answer meets the points contained in the plaint, if it is concise and reasonable, unambiguous, consistent, and easy to understand without explanations. Katyayana mentions that the answer can take four forms-denial-admission-special plea-plea of a formal trial. An answer, which is dubious, too confined, too extensive, meeting only a part of the plaint cannot be considered an answer (23). An answer which is irrelevant, incomplete, mysterious, inconsistent, not understandable, without a commentary and unreasonable does not prevail. Says Katyayana, "That is no answer which confesses to one count of the declaration, sets up a special exception to another and makes a denial of the third".

The judges appear to take down the statement of the witnesses on the floor. In the Mrichhakatika, we have a reference to writing on the floor. Such references are also found in other dramas. From what Brihaspati (24) says it would seem that in the time of that law giver the statements of the parties had first to be written on the board and then on a leaf after the required corrections had been entered. According to Dr. Burnell (25) the boards referred to in the law books must have been a sort of black board.Having heard the complaint and the answer it was now the duty of the judge to fix the burden of proof. The judge should know, says Narada, "Liars may have the appearance of veracious men and veracious men may appear as liars. There are many different characters. Therefore it is necessary to examine everything. The firmament has the appearance of a flat surface and the firefly looks like fire. Yet

there is no surface to the sky or fire in the firefly. Therefore it is proper to investigate a matter though it should have happened before one's own eyes. One who does not deliver his opinion till he has investigated the matter will not violate justice". Speaking of the burden of proof Narada declares, "In the case of a denial, the proof rests on the plaintiff, in the case of a special exception it rests on the defendant". Says Vyasa (26), "In pleas of former judgment and of special exception the defendant must exhibit proof. After the burden of proof had been fixed, the court proceeded to examine the witnesses and documents according to the nature of the evidence rendered. The plaintiff had always the right to reply".

Immediately after investigation, trial and cross-examination the judges proceeded to deliver the judgement. In delivering the judgement the judges were expected to remember the following (27): - "one who takes flight after receiving the summons; one who remains silent, one who is convicted of untruth by the deposition of the witnesses and one who is convicted on making a confession himself, these are four kinds of 'Avasannas' (Losers of suit). One who alters his former statements, one who shuns the judicial tribunal, one who does not make his appearance before the judicial tribunal, one who makes no reply, one who absconds after receiving the summons, these five kinds of persons were called 'Hina". The term for judgement was Jayapatra although the term Jayapatra itself meant document of victor. Narada calls judgement as the mouth of a lawsuit. In his own words "If the mouth of a law suit is in order, the whole suit is in order but not otherwise"(28). The victorious party was always entitled to a copy of the judgement. The judgement was to be couched in appropriate language and was to be concise according to Brihaspati. Every judgement was to begin with summary of the complaint followed by a summary of the answer. These two were to be followed by a summary of the judicial investigation and the decision, which was again to be followed by the signature of the judges and the royal seal. According to Kautilya (29), if witnesses differed, judgement might be given in accordance with the statements of a majority of pure and

respectable witnesses or the mean of their statements might be followed or the amount under dispute might be taken by the King, if witnesses attest to a greater amount, the excess shall go to the King. In cases where the plaintiff proves himself stupid or where bad hearing or bad writing is the cause of difficulty or where the debtor is dead, the evidence of witnesses alone shall be depended upon. In pre-Kautilya days it appears to have been the custom among the judges to give judgement in favour of the priority of approach by the parties; but Kautilya rightly objects to these modes of deciding cases. Says he "My preceptor thinks that he who is the first to complain of a quarrel wins, in as much as it is pain that drives one to law". Whether a complaint is lodged first or last it is the evidence of witnesses that must be depended upon. In the absence of witnesses the nature of the hurt and other circumstances connected with the quarrelling question shall be evidenced. According to Brihaspati (30), when two parties appear in a criminal matter, with counter cases, the caste or marks of injury should decide precedence.

The following story from the Jatakas gives us an idea of the procedure and judgement in an actual case: A retired Government servant stood charged with four offences (1) Non-return of oxen taken on loan. (2) Miscarriage (3) Murder. (4) Injury to a horse. The plaintiff in each case sets forth his complaint. The King questions Gamam, the accused, about its correctness. The latter, on every occasion replies, in the affirmative, but he also places his own story by way of justification of the case without making any secret of it. The King cross examines the complainant and finds both of them guilty of "willful suppression or denial of truth". Hence both the parties are found guilty and deserve to be punished. The decisions contain such conditions as would take the breath of a Shylock away. The judgement on the first charge runs thus: - "you failed to return the oxen and so you are his debtor for them. But this man, in saying that he had not seen them, told a direct lie. Therefore, you with your hand shall pluck his eyes out and you shall yourself pay him 24 pieces of money as the price of the oxen". On the second charge the judgement was:

- "Canda, you take the man's wife to your house and when a son shall be born to you, hand him over to the husband" - on the third "Canda this man must have a father. But you cannot bring him back from the dead. Then take his mother to your house and do be a father to him' and on the fourth 'this man has told a direct lie in saying that he did not tell you to hand back the horse. You may tear out his tongue and then pay him a thousand pieces for the horse's price". All the complainants were dumbfounded and departed!

Elsewhere we witness a curious suit between a town man and a villager being decided by a judge. The town man stood guilty of wrongful possession of some ploughshares belonging to the villager who, was charged with kidnapping the former's son. The townsman had produced his case that the ploughshares were devoured by mice, while the villager, an equal genius had said that a falcon had carried the child off. The judge presses the townsman to tell the truth and realizing the mischief committed by both, he gives out the judgement (31)

"Give back the plough, and after that
Perhaps, the man who lost the plough
May give your son back to you now". (J.2. 181-184)

There appears to have been very little delay in delivering judgement for (32), "Sentence of punishment shall be passed the very day that the defendant accused of assault fails to answer the charge made against him". The Lawgivers again and again insist upon quick disposal. This stands in striking contrast to what obtains today.

With the delivery of a judgement the case did not often close, for if the complaint is proved to be false and fell to the ground it was open to the accused to proceed against the complainant. Sometimes, the judges themselves took up the matter. Says Narada (33), "one must not lodge a false complaint. He is a sinner who proffers a false charge against any one. Whatever fine is declared in a suit of this sort has to be paid by the claimant". Or again "when a man has lost his cause through the dishonesty of the witnesses or the judges

the case may be tried anew. When, however, a man has lost through his own conduct the trial cannot be renewed". The accused also had compared to modern judicial prudence, number of opportunities for appeal. Says K.P.Jayaswal, 'On appeal further evidence could be taken of the same or new witnesses and all new materials examined'. A case of appeal is recorded in the 'Rajatarangini' (34) under the reign of King Yasaskara. "There with the judges who had determined the case on appeal the King in his Council heard the appeal, admitted fresh evidence and reversed the judgement".

In the Licchavi Republic we are told that a convicted person could carry his case from the court of the Matras to that of the Maharaja (35). Between these two, there were as many as eight courts through which he could carry the case. Says Narada (36), "If a man is of opinion that the suit has been decided and punished in a way contrary to justice, he may have the case tried once more provided he should pay twice the amount of fine". Thus it is clear from what has been said above that the procedure in ancient Indian courts was elaborate as the procedure in modern courts, with this difference that delay was always reduced to a minimum in ancient India. According to Kautilya (37) adjournments were to be given very sparingly. "The plaintiff shall reply soon after the defendant has answered the questions at issue. Else he shall be guilty of Parokta, for the plaintiff knows the determining factors in the case, but the defendant does not do so. The defendant may be allowed three or seven nights to prepare the defence. If he is not ready with a defence within that time, he shall be fined with a fine ranging from three to twelve panas. If he does not answer even after three fortnights he shall be fined for Parokta and the plaintiff shall recover out of the defendant's property the amount of the case. But if the plaintiff sues for mere return of gratitude, then no decree shall be passed". Kautilya defines the offences of Parokta as follows: - "Leaving out the question at issue, either of the party takes resort to another; his previous statement is not consistent with the subsequent one; he insists on the necessity of considering the opinion of the third person though it is not worthy of any

such consideration; having commenced to answer the question at issue, he breaks off at once even though he is ordered to continue; he introduces questions other than those specified by himself; he withdraws his own statements; he does not accept what his own witnesses have deposed and he holds secret conversation with his witnesses where he ought not to do so". Thus it is clear that in the matter of trial and judgement the procedure in ancient India was elaborate but effective.

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CHAPTER 22
LAWYERS IN ANCIENT INDIA

The elaborate rules of procedure given in the Dharma Shastras and the opportunities given to the accused for appeal however makes it clear that lawyers must have existed in ancient India, for without them people could not have taken full advantage of the numerous amenities provided in the Dharma Shastras for reaching the ends of justice. As a matter of fact in certain respects the ancient Indian Penal Code and Law of Evidence were far more complicated than their modern counterparts and even the very lawgivers often differed from one another in the interpretation of the texts. Lawyers consequently must have had a good harvest (1). Earliest references to lawyers however cannot be carried to a period earlier than the 2nd century B.C., for even Kautilya, in spite of his elaborate description of the courts and rules of procedure, does not make any reference to lawyers as such (2). Almost the very first mention of lawyers is in that famous Buddhist document of the 2nd century B.C., called Milinda Prasna (3). In this, while describing the city of Sagala and its people the author refers to a set of men called Dharmapanikas and Dharmarakshakas. These expressions must be taken to refer to lawyers, for judges are referred to as Rupadakashas. The expression Dharmapanikas, though not very complimentary to lawyers, is very significant. It means sellers of law and makes it clear that lawyers were charging fees for their work. The expression Dharmarakshakas is of course more complimentary for it means keepers of law. There is no doubt that both these expressions stand for lawyers, the former a contemptuous term standing probably for mercenary lawyers and the latter for really able men.

The Burmese Code (4), which is, by the way, based on the laws of Manu, not only refers to lawyers, but also compares a lawyer to a physician especially when the former defended the prisoner in matters of life and death. Katyayana (5) is certainly thinking of a lawyer when he observes, "A relation or a duly appointed person may undertake the plea or answer for persons who are weak of intellect or insane or old or women or minors or diseased". Again Narada (6) speaks of authorized persons who can argue a case. Says he, "One who has not been authorized must not speak on any account at the trial. But authorized persons must deliver their opinion in an unbiased spirit". Again Pitamaha (7) makes a reference to a body of people called the Sabhyas who must have functioned as lawyers, for he says that these Sabhyas had the right of carrying appeals from the lower courts to the chief court and from there to the King himself, on behalf of the litigant parties. The most direct reference to lawyers however occurs in the Sukra Niti. Says Sukra (8), "Representatives have to be appointed by the plaintiff and the defendant who do not know the legal procedure or who are busy with other affairs, or who are not good speakers, who are foolish, mad and old, females, children and the diseased". Sukra provides even punishment for those other than pleaders and close relations speaking on behalf of a litigant. "If some body is neither a brother nor the father nor son nor a pleader, but speaks on other's interests he should be punished". Thus it is clear that the profession of lawyers was recognized by the ancient Hindu Dharma Shastras.

Compared to modern lawyers, the part played by the lawyers in ancient India must have been inconsiderable, for many were the cases which could not be defended by a lawyer. According to Katyayana, "In prosecutions for killing a brahmana, drinking liquor, theft, adultery with the preceptor's wife, killing a man, touching another's wife and also eating forbidden food, seduction and defilement of a virgin, violent language and actions, fraud and also treason, no prativadi, shall be given; the doer of the act shall plead the cause himself". While Sukra observes, "In cases of murder, thieving, adultery,

taking forbidden food, abduction, harshness, forgery, sedition and robbery, there are to be no lawyers as representatives. The perpetrators are to answer personally". This limitation on the scope of the lawyers was probably due to the anxiety of the lawgivers to see that the guilty never escaped punishment. Intelligent lawyers would have certainly succeeded in making good the escape of several offenders as their representatives do today. Thus the lawyers must have played a more prominent part in civil cases than in criminal cases (9).

They must have been specialists in law. Only the man who knew the law and the Dharma could be appointed as a pleader. There are several references to cross examinations of witnesses. In Milinda Prasna the writer describes the lawyers as those "who according to the spirit and according to the letter, according to reason, according to logic and by illustrations explain and re-explain; argue and re-argue". There is a reference to cross examination in Apastamba (10). It must have been rather severe, for it is referred to as a torture. Even the accused was subjected to a meticulous cross-examination. The Burmese Code of Manu gives a curious story of the origin of the cross-examination. According to it, in the time of Manu, when some boys were playing, one of them arrived at the truth by constant questioning. A study of Sudraka's Mrichhakatika reveals (11) the extent and depth of knowledge that the lawyers had in those days.

The lawyers were entitled to remuneration from their clients. The rate of fees depended upon the amount involved if it was a civil case and upon the gravity of the offence if it was a criminal case. The Burmese version of the law of Manu better known as 'Dharmathat', states: "Any good pleader, though the statement of his case may not have been taken down, if he has only just sat down or put up the sleeve of his jacket, shall have a right to his pay". About the scale of fees, Sukra gives an elaborate account. "The lawyer's fee is 1/16 of the interests involved, for the fee is 1/20 or 1/40 or 1/80 or 1/160 portion as the amount of value or interest under trial increases, if there are many men who are appointed as pleaders

in combination, they are to be paid according to some other way"(12).

A high sense of professional etiquette was insisted upon. They were prevented from charging very heavy fees. In fact, Sukra says, "The King should punish the pleader who charges excessive fees, i.e., fees over and above the limit prescribed". According to the Burmese version of the Laws of Manu (13), fee was to be paid by the client in certain cases only at the end of litigation. This was perhaps to prevent the lawyers from swallowing clients' money. While the clients were thus protected from bad lawyers, the lawyers themselves were protected from bad clients who wanted to deceive them. No client was allowed to change to another lawyer without the knowledge of the one already engaged; the client was expected to pay both according to rules provided in the Dharma Shastras. If fee had been paid wrongly, it could not be recovered after seven months. According to the Burmese Code, an advocate was looked upon as a surety for the client. But according to Narada a lawyer was not responsible for the failure of a case. Says Narada (6), "If one deputed by the claimant or chosen as his representative by the defendant speaks for his client in Court, the victory or defeat concerns the party and not the representatives".

It is clear from the forgoing paragraphs that lawyers existed in ancient India and that they played a prominent part in promoting the ends of justice. Often lawyers spoke in the court although they were not paid by any client, for according to Narada and Sukra, the lawyers present in the court were often consulted by the judges (2). Even if they were not asked, they had the right of making suggestions and offering opinions. "Whether unauthorized, or authorized one acquainted with law shall give his opinion" (6). This right however was denied to those who were not recognized lawyers.

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CHAPTER 23
ANCIENT INDIAN PENAL CODE - INTRODUCTION

That the Ancient Indian Penal Code must have been complicated is clear from what has been said in earlier chapters. The number of sections in the ancient Indian Penal Code must have been at least double that of its modern counterpart. We have already pointed out there were as many as 250 offences which were punishable by fine according to the Artha Shastra of Kautilya. This huge size of the ancient Indian Penal Code was due to the fact that the lawgivers included as offences many acts, which are not considered so today. According to Pitamaha, acts like uncovering the body, blowing nose, passing wind, taking the foremost seat, entering through a wrong door, occupying an unoffered seat, speaking without being asked to and untying hair, were considered offences punishable by law. In short, in ancient India, legal offences were not differentiated from moral offences.

Another noteworthy feature of the ancient Indian Penal Code is the recognition of supremacy of law. Even the King was not exempt from punishment. If the King went wrong, even the poorest menial enjoyed the right of questioning the King. Manu declares, "May he be a father or preceptor or a friend or a son or a priest, may she be a mother or wife, if he has not behaved according to his own duties, he is not unpunishable by the King." (Manu VIII 335)

A careful study of the Dharma Shastras and Sutras makes it clear that Penal Law in India today cannot lay claim to any progress since Manu and Yajnavalkya although it has increased

and multiplied. If there are some points in favour of modern Indian Penal Code, there are many in favour of the ancient Indian Penal Code and on careful weighing, it is possible one is inclined to cast his vote in favour of the latter.

It was the foremost duty of the King to punish the offender. Kingship itself as an institution was created to punish the wicked and protect the innocent. Law itself created its own 'Danda' (punishment) to protect all living creatures. Law itself was defined as the science of punishment. "The King" says the Santiparva in the Mahabharata, "through whose negligence the subjects are plundered by robbers and who does not offer protection to those whom he is called upon to rule is said to be the personated Kali". Again it is said "If the King did not punish a man, who deserved punishment, he was to starve for a day; if he punished a man who was innocent, he had to starve for three days". Manu looks upon such a King as a criminal while Gautama and Apastamba maintain, "if the King does not strike, the guilt falls on him". Says Narada "neither for the purpose of gaining a friend nor for the acquisition of large wealth must a wicked criminal be allowed to go free by the King". Indifference to punishment was looked upon as a moral and legal guilt. By pardoning an offender, a King commits the same offence as by punishing an innocent man. Religious merit accrues to him by punishing the wicked.

It was the duty of the King to punish his own father if he were guilty of any crime and Manu declares "May he be a father or a preceptor or a friend or a son or a priest, may she be a mother or wife, if he has not behaved according to his duties, he is not unpunishable for the King".

Thus while modern Criminal Law gives ample scope to the judge to let go the accused, the ancient Shastras required the judge to punish him. Legal maxims like 'the benefit of doubt should be given to the accused", "it is better to leave 99 guilty unpunished than to punish one that is guiltless," which largely influence administration of justice today were conspicuous by their absence in ancient Indian jurisprudence. Kings and judges who erred on the side of leniency were subjected to severe

chastisement and sometimes even punishment. Says Vishnu, "that detestable judge who dismisses without punishment such as deserve it and punishes such as deserve it not, shall deserve twice as high a penalty as the criminal himself". Again, says Brihaspati, "Judges passing an unjust sentence, those who live by taking bribes and those who disappoint confidence placed in them, all such persons shall be banished". Kautilya gives more details than any other lawgiver regarding the punishments to be awarded to judges in case they erred in their judgment. It is clear from what has been said above that in ancient India great care was taken to bring the offender to book; failure to do so was taken very serious notice of. This should not however make one think that punishments were indiscriminately awarded. It was as great a sin to punish the innocent, as it was to acquit the guilt. Says Manu: "Unjust punishment destroys reputation among men and fame after death and causes even in the next world loss of heaven. Let him therefore beware of inflicting it". Again says he, "let the King having fully ascertained the motive, the time and place of the offence cause punishment to fall on those who deserve it". Kautilya makes the position clearer still "when a judge threatens, brow beats, sends out or unjustly silences any one of the disputants in his court, he shall first of all be punished by first amercement. If he defames or abuses any one of them, the punishment shall be doubled. If he does not ask what ought to be asked or asks what ought not to be asked or leaves out what he himself has asked or teaches, reminds or provides any one with pervious statement, he shall be punished with middlemost amercement". These citations make it clear that their anxiety to punish the guilty did not however make them unjust. The point to be noted is that in modern judicature many are the judges who, on grounds of doubt or want of evidence, let go the accused in spite of their own personal conviction about the guilt of the accused. Such a thing was impossible in ancient India. Every effort was made to fix the incidence of the guilt. Says Yamunacharya, "Oh, King remember that it is only the fear of punishment that makes the wife respect her lord, keeps the sexes apart, each in its own

line, that compels people to repress their passions for the public good, that induces the lower orders to obediently work in union with those above them and that secures to the King himself the services of a dutiful and loyal servant".

It is unfortunate that our lawgivers nowhere give a categorical definition of crime. This was perhaps to prevent fettering the discretion of the judge. Crime, however, is defined by experts as, "A crime is an act forbidden and penalized by the law, which is almost always immoral according to the prevailing ethical standard, which is morally harmful to the society, which is ordinarily feasible to repress by penal measures and whose repression is necessary or is supposed to be necessary for the preservation of the existing social order". I think this definition applies as well to crimes in ancient India. But we should remember that when religion succeeds in stigmatizing as criminal acts which are not regarded as objectionable in any other way, most of the general characteristic of crime mentioned above do not apply. Says Kamandaki in his Nitavakyamrita, "Danda is like medicine, the agency that cures the distempers of the State. The objective of Danda Niti is the securing of the welfare of the people. It is never to be used for the acquisition of wealth. The King should not be on the lookout for faults in his people, like the quack doctor who makes a living by the exploitation of diseases in his neighbours. If Danda is misused under the inspiration of ignorance or a lust for wealth or revenge, it alienates the subjects".

Contradictions

Punishments in ancient India were very severe. In many cases the judges awarding punishments were guided by the principle of 'an eye for an eye' and 'a tooth for a tooth'. Says Manu, "With whatever limb the thief in any way commits an offence, even of that the King shall deprive him". Even petty offences met with punishments quite out of proportion to the gravity of the situation; "if one is invited to dinner, but fails to keep up the engagement he is to be fined". Still more amusing is the fact that one who failed to invite his neighbour (brahmin) to a feast was also liable to fine. In the words of Elphinstone,

"The criminal law is very rude, and this portion of the code, together with the religious penances, leave a more unfavourable impression of the early Hindus than any other part of the institute".

If punishments are in some cases too servere, in others they are far too lenient. Mutilation (chiefly of the hand) is among the punishments, as in all Asiatic codes. Burning alive is one of the inflictions on offenders against the sacerdotal order; but it is a honourable distinction from most ancient codes that torture is never employed either against witnesses or criminals. But the laxness, confusion, and barbarism which pervade this branch of the law seem to prove that it was drawn from the practice of very early times; and the adoption of it at the time of the compilation of these institutes shows an unimproved condition even then, though it is not unlikely that parts of it were superseded by an arbitrary system as is the case in Hindu countries in modern times; and by no means improbable that the bloody laws in favour of religion and of the priesthood, though inserted in the code by the brahmin authors as the ideal perfection of a Hindu criminal law, may never have been acted on by any Kshatriya Kings.

The punishments are frequently so indistinctly or contradictorily declared as to leave the fate of an offender quite uncertain.

Both these faults are conspicuous in the following instances:- Slaying a priest, drinking spirits, stealing the gold of a priest, and violating the bed of one's natural or spiritual father, are all classed under one head, and subject to one punishment, that punishment is at first declared to be, branding on the forehead, banishment and absolute exclusion from the society of mankind (unless previously expiated by penance, in which case the highest fine is to be substituted for branding); and this is declared applicable to all the classes. Yet it is immediately afterwards directed that, when expiation has been performed, a priest guilty of those offences shall pay the middle fine, and shall in no case be deprived of his effects or the society of his family, while it is pronounced that the other

classes even after expiation, shall in case of pre-meditation, suffer death.

Still more inconsistent are the punishments for adultery, and what are called overt acts of adulterous inclination. Among these last are included, talking to the wife of another man at a place of pilgrimage or in a forest or at the confluence of rivers; sending her flowers or perfumes; touching her apparel or her ornaments, and sitting on the same couch with her; the penalty is banishment, with such bodily marks as may excite aversion!

For adultery itself, it is first declared, without reserve, that the woman is to be devoured by dogs, and the man burned on an iron bed; yet, in the verses next following it appears that the punishments of adultery without aggravation is a fine from 500 to 1000 panas!

Kinds of punishment

Punishments in ancient India, depended upon communal considerations also. The punishment for adultery was 500 to 1000 panas generally. But a soldier committing adultery with a brahmin woman was to be burnt alive in fire or dry grass or reeds. A kshatriya abusing a brahmin is fined 100 coins and vaishya 150 coins; but a brahmin abusing vaishya only 25 coins and will go scot free for abusing a sudra. The brahmins appear to have had special treatment whatever might have been the gravity of the offence. Says Vishnu, "in the case of a brahmin, no corporal punishment must be inflicted". While Narada maintains, "a brahmin cannot be subject to capital punishment. His punishment shall be shaving of the head, banishment from the city, a brand of infamy on the forehead and parading upon an ass". Says Narada "let him not on any account kill a brahmin though convicted of all possible crimes". Alberuni observes that a brahmin who was guilty of murdering another brahmin, of killing a cow, drinking of wine and whoredom was expelled. For heavy theft, a kshatriya was punished by amputation of his left hand and right foot or right hand and left foot; a brahmin was similarly mutilated as well as blinded, while members of other castes were put to death.

Sometimes this exemption was carried to a ridiculous extent. Says Apastamba, "in case a sudra commits homicide or theft, his property shall be confiscated and he himself shall suffer capital punishment. But if these offences be committed by a brahmin, he shall be made blind by tying a cloth over his eyes!".

As at the present day there were several kinds of punishments. Prominent among them were death, banishment and exposing to public censure, mutilation, imprisonment and whipping, confiscation of property and fine. Death as a penalty was inflicted for many offences, some of which appear to us to be petty to deserve capital punishment, yet these were looked upon as serious enough to deserve maximum punishment. Vishnu, "let the King put to death those who forge royal edicts and those who forge private documents, likewise prisoners, incendiaries, robbers and killer of women, children or men; and such as steal more than ten kumbhas of grain or more than a hundred mashas of such things as are usually sold by weight, such as also aspire to sovereignty though being of low birth, breakers of dike, and such as give food and shelter to robbers". According to Manu, those who administer poison, who are incendiaries and robbers and those guilty of homicide and abetment thereof should pay the extreme penalty of death.

Death itself was caused differently to different persons according to the gravity or heinousness of the crime. One who murdered another by administering poison was simply hanged while another who murdered by driving numerous nails into the victim's body was burnt alive. Kautilya is very particular about the mode of execution, for he thinks and rightly so, that the cruelty of the murder should be taken note of in deciding the mode of execution. According to him man slaughter is of three kinds: those which result in immediate death, those which result in death after a week and those which result in death after a month. In the first case the accused was to be tortured before execution, in the second case he was simply hanged and in the third case the accused was imprisoned and fined. Sometimes such persons were suspended from trees until they die. In the Kaluvakka Jataka we find the King ordering the

execution of a Boddhistva by being trampled upon by elephants. In Culla Padam Jataka we have the case of a robber whose hands, feet and nose were cut and he was himself allowed to drift down the river. In Kanavera Jataka we find that not only was the robber's head cut off, but his body was also impaled. Thus death was caused by hanging, by burning alive, by putting hot oil and red hot iron into the mouth, by impalement, by being thrown before the royal elephant, by cutting to pieces by means of razor and by being thrown to the wild dogs. In Mrichhakatika, speaking of Sakara, the servants observe, "Shall we have him well tied and dragged along and devoured by the dogs or shall we cut him by a saw?" Kautilya maintains that when a man other than a soldier steals weapons or armour he shall be shot down by arrows. House-breakers were impaled alive and high-way men were hanged by the neck to a tree. According to Yama, a brahmin woman who overpowered by desire seeks the company of a vrishala should be caused by the King to be devoured by dogs at the place of execution.

Thus the judges in ancient India had a two fold task in awarding capital punishment. They had not only to award the punishment, but also to decide the mode of inflicting it. It is amusing to note that if an accused committed suicide immediately after committing an offence (punishable with death) even then he was not free from the clutches of the courts. His relations were not allowed to take the body. "The big jackals drag one half of the man's body while the other half clinging to the gibbet is like a mask of loud laughter". Says Kautilya "whoever burns or carries away the corpses of the above offenders shall meet with similar punishment or pay the highest amercement".

Man-slaughter was often not looked upon as such a grave crime as to merit capital sentence. This is particularly to be regarded in view of the fact many petty offences met with this penalty. The murderer had not to dread a public trial and punishment. The Rigveda does not provide any express punishment for man-slaughter. The payment of a small sum 'Satadaya' (corresponding to the English Wergeld) to the

relatives of the victim appears to have sufficed. One word in the Rigveda shows that the system of Wergeld was in full force. During the Rigveda period the price of blood was a hundred cows. In one hymn the Pani whose niggardliness made him the chief object of dislike to the Vedic poets, is declared to be a man only in so far as he had a Wergeld, (here called Vairadeyu that which is to be paid in respect of enmity). The Sutras fix the Wergeld of the kshatriya at 1000 cows, of the vaishya at 100, and of the sudra at 10 with a bull over above for the King. In the case of a woman, the same Wergeld as for a sudra is fixed. Baudhayana preserves a record of the old theory of Wergeld. One is shocked to learn that the fines for killing a flamingo, a peacock, a crow, an owl, a frog etc. is the same as for killing a sudra. The murderer however, was under the obligation to protect the relations of the murdered. Apastamba however observes, "If a death sentence or a sentence of banishment was inflicted upon an accused, it became the duty of the King to protect the members of the victim's family". It has however, to be pointed out that as years advanced, the lawgivers realized the gravity of the offence and fixed death penalty for man-slaughter. Says Brihaspati, "violences declared to be of five sorts and of these man slaughter is declared to be amerced in a fine, they shall be put to death by all means". Kautilya, as we have already seen also agrees with Brihaspati.

Execution & executioners

Execution of the criminals appears to have been an elaborate affair. The name and antecedent of the victim, the day of execution and the mode of execution were made known to the people long before by beat of tomtom. The place of execution was generally near the burial ground. On the day of execution, the victim was given a new dress and was taken to the spot in a long procession. Sometimes his head was clean shaven and washed with his own urine instead of water and (branded with) the head was marked by black and white dots. Some times the forehead was branded with the figure of a headless trunk. Often the accused was compelled to ride on

an ass to the spot with a garland of sandals. The procession must have been a long and tedious one, for we are told that at every street corner the executioners had to announce the crime. According to Mrichhakatika, the same had to be pronounced three times at every street corner. The following is an instance of the announcement. "Listen gentlemen, listen. This person is the grandson of the merchant Vinayadatta and the son of Sagardatta and he goes by the name of worthy Charudatta. The culprit for the sake of a mere trifle as gold, enticed the courtesan Vasanta Sena into the lonely garden of Pushpa Karanda and had her murdered by forcibly strangling her. He was caught with the stolen property and he himself confessed his guilt. We have therefore, been ordered by King Palaka to execute him. And if any other commit such a crime objectionable in this world and in the next, then he will be condemned by King Palaka with a like punishment".

Until the accused was executed one could never say what would happen to him. 'If the victims were lucky he might escape'. Says the executioner in the Mricchakatika, "perhaps some good man may give money and liberate the criminal. Perhaps son may be born to the King, in the celebration of which festival occasion all the criminals may be liberated. Perhaps an elephant may break loose from its chains and the prisoner may be let off in the excitement. Perhaps there may come a change of Kings and all the prisoners may be set free. It was even possible that the accused was let off in the last moment on account of some new proof of his innocence". It was perhaps on account of this that Asoka insisted on three days respite being given to those who were condemned to death. Says Asoka , in Pillar Inscription 4, "in order that these being from fear, misgivings and distracted mind, might apply themselves to their tasks, independence of the Rajukas has been ordained by me in the matter of Law and Justice.

Since it is to be desired that there should be uniformity in law as well as uniformity in justice; from this time forwards is my injunction: - "To persons confined in chains, already

judged, and sentenced to death, a grace of three days has been granted by me".

Execution appears to have been always in public. Both in Mudra Rakshasa and Mrichhakatika, we are told that a huge crowd followed the victim and that another huge crowd of people assembled at the place of execution.

The executioners were generally selected from the Chandala family. In Samaraichchakaha of Haribhadrasuri we are told that these Chandalas were given a separate habitation, and it was the duty of the Chandala to execute the criminals who were sent to them duly tried by the King. Among Chandalas whose duty it was to execute the criminals there appears to have been a Head Chandala, whose orders the others had to obey. The Chandalas themselves appear to have been paid according to the number of executions carried out by them. This perhaps explains the feverish anxiety exhibited by the Chandalas to execute a criminal. They were also known as Choraghtakas. They are represented in the Jatakas with hatchets on the shoulders and ropes in their hands. They had to accompany the victim, who was led to the execution ground in a procession with a special execution drum. We are told that generally brick dust was sprinkled on the head of the victim and that he was scourged with whips at every square and that he was carried to the execution ground through the southern gate of the city.

When a careful study of our ancient records is made the executioners do not appear to have been as cruel and unsympathetic as they are represented to be. On the other hand there are several instances to prove the extraordinary sympathy and kindness of the executioners. Instances are not wanting to show cases where the executioners let off the victim taking pity on him even at the risk of their lives. The following extract from the work of Haribhadrasuri is typical of what the executioners did in ancient India: - "The King ordered, "Then kill him". (Now we await your order). They took him to the habitation of Chandalas and handed him over to the trustworthy Chandalas whose duty it was to execute (the

criminal) who were sent to them duly tried by the King (or who were enjoined duly by the King), saying "Hey! His Majesty orders that this robber should be killed". They said, "As His Majesty commands". He was then handed over to them. The guards went away. The senior-most Chandala asked, "Whose month and day of execution is now?" The Chandalas said "(It is now the turn) of Maurya". He said, "Then call him quickly". Maurya was called and he came accordingly. He was instructed by the Senior Chandala "Maurya, here is a thief sent by His Majesty for execution .So take him to the cemetery and do short work of him quickly. There is (hardly) a watch of the day remaining and later on during the night there might be some mistake, if he is not executed just now". Maurya replied "As you order". Dharana was accordingly handed over to Maurya who recognized him. He thought, "It is indeed the same young merchant who had saved my life! Alas! Even he should be reduced to such a state!". And Maurya was extremely dejected. He then thought, "O even the sun and the moon suffer adversity from their enemies-the planets (though it be) for a moment. So I shall just take him to the cemetery and gather from him the incident as it stands". He was then taken to the cemetery, and his fetters were removed and falling prostrate at his feet, Maurya said, "Noble Sir, do you remember me whom you saved in the (city of) Ayumukh". Dharana said, "My good man, I do not quite recollect". Maurya said "how do you not recollect, when I was released by you, having paid a large sum to the King, when I was taken for a thief even when I was not one, just as at present you have also been taken for one"? Dharana said, 'Oh, that's a trifle". Maurya asked, "now tell me, sir, how you came to this sort of plight". Dharana replied "well, you have to ask fate about it" Maurya then thought "It is no good wasting time; self- respected as he is, how can he tell it himself? Or what is to be told? Diverse are the actions of fate! So what is the good of my pressing him? (This) or rather he has really told it, when he said "Ask fate." So, now this is just proper for the occasion that he should be dispatched immediately". With these thoughts, he said to Dharana "Sir, what is the good of talking much? Leave all dejections and run away (at the cost of the life of others)

quickly". Dharana answered "Good man, I cannot save my life at the cost of the life of others. So better kill me, because you are (after all) merely a servant". Maurya replied, "Sir, do not be afraid that my life would be in danger. This our King is really a magnanimous person; he would not kill us even for hundreds of faults on our part. But in case you would not go, I shall for certain kill myself. So may your honour go away". Dharana thinking that there is nothing impossible to the affection of a good person, said to him, "Gentleman, if it be so, then I shall go away". Maurya said, "I am indeed highly obliged". He showed Dharana the (proper) path and having bowed down to him, Maurya returned back. Dharana fled away because of the pressure of his friend.

Execution itself appears to have been an art! And only those who were trained in that art were appointed for the post. In Mrichhakatika executioners say, "We are clever in new modes of killing and fettering. We are expert in chopping off the heads, and in impaling in short time". The executioners however, appear to have been cultured men. They give expression to very fine sentiments. Says the Chandala, in the Mrichhakatika, "We are not really Chandala, even though born of the chandala race. Those sinful men who dishonor and disagree the virtuous, they alone are Chandalas". Again says the executioner, "in prosperity or in adversity by the night or the day, the invulnerable fate holds its own course like an unrestrained young mare." And again: - "Titles are empty things; what has he done that we should not bow our heads before him? Although Rahu may seize the moon, is she not adored by men?" Again one executioner observes, "Noble Charudatta, even the sun and the moon, dwelling in the heavens, are over-taken by disaster, how much more, death fearing creatures, and men! In this world, those who rise do fall, and who fall do rise again. From him who rises and falls, his body drops like a garment". The executioners appear to have had ample powers. Sometimes we find them taking the law into their own hands and trying to execute a criminal even though he had not been properly tried and convicted. In Mrichhakatika we find that the executioners proceed towards

the brother-in-law of the King when they are assured of the innocence of Charudatta. Again the executioners seem to have had ample discretion regarding the mode of execution. They could either throw the criminal to the dogs or hoist him on the stake or cut him by a saw. From the foregoing it is clear that the executioners had more power than their modern representatives. We also note that often that they were very sympathetic and could not brooke miscarriage of justice.

In fairness to our ancient writers we must point out that though punishment was inflicted on many offenders, they were not unaware of its defects. As a matter of fact, the Mahabharata explains better than many modern lawyers the evils arising out of capital punishment. The following extract from the book of K.P.Jayaswal, is of great interest in this connection. Says he, "It seems that the general tendency of the country in the early centuries of the Christian era had been to look at capital punishment with disfavour. The reason, amongst others, was the spread of Buddhism. The discussion in the Mahabharata on the undesirability to continue capital punishment is very important. Such a theory must have influenced the policy of punishment both with regard to brahmins and non-brahmins. The discussion does not make any distinction. The discussion in the Mahabharata runs as follows.

The discussion starts with the stock, adverse argument that if capital punishment is abolished, all the distinction between virtue and vice would disappear. 'This is mine, 'that is not his', distinctions like these would prevail no more, 'rights and obligations', would be in abeyance and 'society' would come to an end. The fallacy is obvious; the argument assumes that total cessation of punishment has been promised. And the reply opens with an emphasis on the desirability of punishing offences. But the punishment should be inflicted "without destroying the person of the offender". In support of this, four reasons are advanced:

(1) Capital punishment operates hardship upon the innocent dependents. "By killing the wicked, the King kills a large number of innocent men; (for instance) by killing a single

life". (3) Capital punishment takes away the possibility of good members being added to society. "It is again seen that good people do spring from wicked ones".(4) A historical reason; "the offender should not be uprooted, for it is not in consonance with the traditional law. The ends of punishment which the traditional law had in view is assumed to be a mental cure, and for mental cure, non-capital punishments are prescribed (in ancient law- mental pain, imprisonment, disfiguring etc. - some readings also include confiscation)".

The theory, however, never found its way into the law books and writings of Hindu lawyers. But that does not exclude its effect on actual administration. As a matter of fact, Fa-hien did find capital punishment abolished in India in actual administration.

Banishment, branding, mutilation etc.

Banishment corresponded to modern transportation for life. It was inflicted only for grave offences. In the case of brahmins it took the place of capital punishment. Banishment was the penalty for giving false evidence. Again banishment was the punishment for those who did not assist in repelling an attack to plunder a town, to break down an embankment or to commit robbery on the high way. Banishment however, must have been more severe than its modern counterpart - transportation for life - for a banished person had little or no hope of living elsewhere. Says Manu, "No one including his family could have social intercourse with a banished brahmin; all legal rights were denied to him. He became a social and legal outcast, an outlaw not to be greeted, not to be associated with, not to be heard in law courts. His only alternative was to die of starvation.

Branding and exposure to public censure were punishments peculiar to ancient India. Aristotle says in his 'Politics': "For the proper administration of justice and for the distribution of authority, it is necessary that the citizens be acquainted with each others'characters, so that, where this cannot be, much mischief ensues both in the use of authority and the administration of justice". Thus in those days an

individual cared more for public opinion than today. An individual's status largely depended upon his position in society. One hated by the members of his society could not get along with equanimity. As the means of communication were few and far between, each individual depended on his society for something or the other and naturally any offence on his part was sure to deprive him of those privileges. The judiciary naturally took advantage of this high sense of self-respect and instituted branding as a mode of punishment, for a person with a branded symbol on his forehead was object of public ridicule and contempt. Very few dared to associate with him. He was for all practical purposes a social outcast. This branding was generally done with a red hot iron on the forehead and it was often symbolic of the offence committed. For example, a sudra who posed himself to be a brahmin by wearing the scared thread had the likeness of thread branded across his chest. "For murdering another brahmin, let the figure of a headless corpse be impressed on his forehead; for drinking spirits, the flag of a seller of spirituous liquor; for stealing gold, a dog's foot; for incest the mark of a female part" (Vishnu). Again says Narada, "For violating the bed of a Guru, the brand of a female part should be made; for drinking spurious liquor, the brand of liquor sign is ordained, for theft he shall make the brand of a dog's foot on his forehead".

Mutilation was a punishment, which existed throughout the ancient world. The code of Hammurabi gives us several instances of mutilation. So long as the theory of justice was based upon the principle "an eye for an eye, a tooth for a tooth, a limb for a limb", if an inferior insults or hurts his superior in caste, of that limb, the King shall cause him to be deprived. If he places himself on the same seat with the superior, he shall cause him to put a mark on his buttocks; if he spits on him, he shall lose both lips; if he breaks wind against him, his hind parts; if he uses abusive language, his tongue. If a low born man through pride gave instructions to a member of the highest caste concerning his duty, let the King order hot oil to be dropped into his mouth. If a low born man mentions the name or caste of superior revilingly an iron pin ten inches long shall

be thrust into his mouth. Says Kautilya, "When Government servants commit for the first time such offences as violation of sacred institutions, or pick-pocketing, they shall have their index fingers cut off or shall pay a fine of 54 panas. If the offence is repeated, his hand shall be cut off. Again when a person steals or destroys cocks, mongoose, cats, dogs or pups of less than 54 panas in value, he shall have the edge of his nose cut off or pay a fine of 54 panas-but if these belong to the Chandalas or wild tribes, only half of the above fine shall be levied. When a person steals a cart, a boat or minor quadruped, he shall have one of his legs cut off or pay a fine of 300 panas, if a big animal is stolen, both the legs will be cut off. He who castrates a man shall have his generative organ cut off. "One who enjoys by force another woman" says Brihaspati "will have his scrotum and penis cut off and should be carried on an ass".

Fines, imprisonment & whipping

Fine, however, was the often imposed punishment. In the case of some offences, fine appears to have been levied in addition to some heavier punishment. But there were a large number of offences for which fine alone was the punishment. In fact, Kautilya enumerates more than 250 offences, which were to be punished by the levy of fine. Among these following would be of interest to present day readers: For extravagance, for neglect of work, for using unstamped weights and measures, for selling rotten flesh, for cowherds milking cows many times a day, for throwing dirt in the street, for committing nuisance in streets, for moving in the streets of the city at night after the trumpet sound, for cruelty to animals, for a woman for not helping during child birth, for not making water courses near the houses, for encroachment upon boundaries, for not taking part in a work beneficial to all villagers, for failure to pay wages, for giving a girl in marriage without announcing her blemishes, for stealing articles of small value, for sitting under the shade of a tree longer than allowed, for selling bad things, for impersonating a Government servant, for physicians for carelessness in treatment, for using false

weights and balances, for enhancing price, for killing rats, for the misdeeds of a clerk, for pick-pocketing etc. Fines were levied on judges who did not decide the cases properly. Says Kautilya "When a judge or commissioner imposes an unjust fine in gold, he shall be fined either double the amount of the fine or eight times the amount of imposition which is either more or less than the prescribed limit" Again when a clerk does not take down what has been deposed by parties, but enters what has not been deposed, evades what has been said.....he shall be punished with fine. Fine was the punishment for defamation and the amount varied according to the status of the person defamed. Some times even greater offences met with only fines. Says Kautilya "when a senseless man has sexual intercourse with beasts, he shall be fined 12 panas; when he commits the same act with idols of goddesses, he shall be fined twice as much". For the same offence, the punishment today is seven years rigorous imprisonment. The amount varied from time to time. According to Narada, "fines begin with a Kakani and the highest amount of a fine is one's entire property". "Fines beginning with a Kakani are declared to amount to one Karshapana at most". Sometimes, in addition to the fines, the accused was expected to make good any financial loss the victim might have sustained. "All those who hurt a man had to meet the cost of cure". Kautilya gives us some interesting details about the calculation of fines. Says he, "The school of Manu hold that a fine equal to the loss of revenue and multiplied by the serial number of the instances of the guilt just narrated shall be imposed upon him. The school of Parasara hold that the fine in all the cases shall be eight times the amount lost. The school of Brahaspati says that it shall be ten times the amount. The school of Usanas says that it shall be twenty times the amount. But Kautilya says that it shall be proportional to the guilt".

Imprisonment was another common punishment. The Jatakas make us understand that there were regular prisons. These were known as Bandhahagarani. Says Jayswal, "In the Artha Shastra and in the inscriptions of Asoka, the prison appears as a well known institution, but if we look at the

translations of the two codes it would seem that there is not a single case where imprisonment is awarded. Translations here are faulty. "The First amercement," "the middle amercement" and "the highest amercement" are really the first , the middle and the highest "Sahasa punishments". They are punishments both of imprisonments and fines; there were the first class (etc.), Sahasa fine and the first class Sahas a imprisonment. When the code prescribed a fine they say Dapya (to be 'given') and similar terms, or mention the amount. When they mean imprisonment, they do not qualify it.

Bandhana or imprisonment was to be served either in the jail, Bandhana-agara or, at the mines (AS.), which meant hard labour. The Manava, by a provision, directs that if the culprit failed to pay the fine he would have to do labour, or in other words, in default the man had to undergo imprisonment. We do not know exactly what kind of offenders were imprisoned or how the period of imprisonment was apportioned in accordance with the seriousness of the offence. We have several instances of learned and trusted ministers thrown into prison without any limits regarding the period. Life inside the prison must have been very hard if the Jatakas are to be relied upon. We are told that every prisoner was bound by chains of iron (Sankhalikabandhanam). In one Jataka we have instance of a released prisoner telling to his friend that when he was in jail, he had no bath for days together. Nor was he allowed to rinse his mouth, nor was he allowed to perform any bodily ablutions. The Jataka stories make it clear that prisoners were entirely at the mercy of the King-their life and death being in his hands. In one Jataka we are told that a King in order to save his own life from a Yakkha promised to send to him one man daily as his food. His minister encouraged him by saying, "Be not troubled there are many in jail". The King at once began to send one prisoner daily and after a time the jails bcecame empty. In another place we are told that the prisoners were killed at the order of the King. Though the condition of the prisoners was severe, those who were lucky were often let off earlier than their period of imprisonment. Says Kautilya "on the days to which the birth star of the King

is assigned as well as on full moon days, such prisoners as are young, old, diseased or helpless shall be let out from the jail, or those who are of charitable disposition or who have made any agreement with the prisoners may liberate them on paying an adequate ransom". Again, "once in a day or once in five nights jails may be emptied of prisoners in consideration of the work they have done or of whipping inflicted upon them or of adequate ransom paid by them in gold. Whenever a new country is conquered, when an heir apparent is installed on the throne or when a prince is born to the King, prisoners are usually set free". Asoka tells in Pillar Edict V that he effected as many as twenty five jail deliveries. Says he "Until I had been anointed twenty six years, in this period, twenty five jail-deliveries have been effected by me".

Vishnu provides whipping in the following cases: "he who has mortgaged more than a bull's hide of land to one creditor and without having redeemed it, mortgages to another shall be corporally punished by whipping or imprisonment". Whipping, imprisonment and fine were sometimes inflicted on the same accused. The King had also the right of rebuking the accused and letting him off. Says Narada, "Those rogues who ravage in their own country and those who disturb sacrificial acts, they shall be stripped of their wealth and rebuked severely". He could sometimes even strike them on their heads.

Enough has been said to show that the ancient Indian Penal Code was far in advance of the several contemporary codes of other countries. It is no wonder that "the doors were never locked in Ancient India" (Megasthanes).

CHAPTER 24
ANCIENT INDIAN PENAL CODE - A REVIEW

(It can be seen from the preceding chapters that the author has done an extensive and indepth study of the system prevailing in ancient India for administration of justice.

In this concluding chapter, he has attempted a review of the ancient Indian Penal Code and deals with the different types of crimes and punishments then existing. - Editor)

Punishments in ancient India were no doubt severe as already stated. Very minor offences were retaliated with death, mutilation and branding. But in fairness to the ancient Indian law givers we should observe that severity was feature of all ancient codes (1). Compared to Draco and Justinian, our codes must be pronounced mild. In England, even in the 17th century punishments continued to be as severe as it was in India in centuries before Christ. Offences like burglary, horse stealing, stealing property worth more than a shilling, rape and abduction were all capital. Women were burnt alive for coining. In practice they were generally strangled. The very mode of execution often depended upon the whims and fancies of the executioners. Men and women were also publically whipped. In fact in English law several crude notions persisted long after they had been given up in India. Thus in the English Law of Deodand (2) which was not abolished till the middle of the nineteenth century, there was a survival of the view that anything that had killed a man must undergo a kind of religious purification. A cart, for instance, which ran over a man or a tree which fell on him was confiscated and

sold for charity-at bottom a merely humanized version of the ancient Athenian process whereby the axe that had slain a man was brought to trial and if found guilty solemnly thrown over the boundary. In Chinese law (3) accidental patricide is still capital whereas in India even during the period of the Dharma Shastra accidental crimes were often excused. In China, a wife killing her husband unintentionally is sentenced to decapitation. A misdeed which however indirectly caused the death of a senior relation is also punished with death if the relative be a parent; a senior relative is punishable for an offence committed by the juniors even if the senior knows nothing of it. A father was sentenced to one hundred blows because his son had abducted a girl. A junior relative is still more heavily punished for the offence of a senior. If a man murders four members of one family, he suffers the lingering process and his male children irrespective of age, die with him in equal number to those murdered. In the case of Wang-Chin-Pin a child of ten was condemned (to be castrated), by death for murder by its father. In another instance the children were condemned to be castrated, the father having killed three persons. According to Hodson death sentence is still given in Nepal for stealing properties of great value or in the case of repeated theft. Thus one turns with considerable relief to ancient Indian law books where a far highly developed sense of justice is evident. The right of private defence was recognized and people had the power even to kill the offender if their lives were in danger. "By killing an assassin", says Manu, "the slayer incurs no guilt whether he does it publicly or secretly. The killer does not incur the sin of killing but the villan is killed by his own unrighteousness (4)".

Kautilya (5) gives the best advice regarding the award of punishments. Says he, "for whoever imposes severe punishment becomes repulsive to the people, while he who awards mild punishments becomes contemptible but whoever imposes punishment as deserved becomes respectable. For punishment when awarded with due consideration makes the people devoted to righteousness and to works productive of wealth and enjoyment, punishment when ill awarded under

the influence of greed and anger owing to ignorance, excites fury even among hermits and ascetics dwelling in forests, not to speak of householders. But when the law of punishment is kept in abeyance, it gives rise to disorder, the strong will swallow the weak". Though punishments were severe, these could not be inflicted without reference to the status and health of the accused. Says Gautama (6), "the award of punishments must be regulated by a consideration of the status of the criminal, of his bodily strength, of nature of the crime and whether the offence has been repeated". Manu (7) points out that corporal punishment should be inflicted only on some select parts of the body such as the belly, hands, feet and tongue.

Another feature of ancient Indian Penal Code is the preferential treatment given to people of particular communities. In defence of this treatment, says the Satapata, brahmins stand together as upholders of dharma among men, being both incapable of any speech or deed that is not right. In another passage it is said that the brahmins who have studied and teach the sacred lore are the human Gods. This preferential treatment of brahmins however, appears to have been a later development. Kautilya and Apastamba do not advocate any preferential treatment to brahmins. "brahmins guilty of serious offences must be drowned" says Kautilya . We have again the case of Charudata, in Mrichhakatika (8), who though a brahmin, was condemned to death. The preferential treatment might have begun some time in second century B.C., when the Sungas were in power. Brihaspati (8), for example, insists upon all guilty of man-slaughter being executed.

Preferential treatment, however, was not peculiar to ancient India. Such a kind of treatment continued in England throughout the Middle Ages (9). Students of English history know only too well the attempts made by Henry II to put an end to the special treatment given to the clergy in the courts of justice.

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ABOUT THE AUTHOR

The late K. Srikantan was from a village called Kadathur in present day Tamilnadu. His parents were Sanskrit scholars and deeply entrenched in the traditional way of life. The family later moved to Nanjangud, where his father joined the legal profession.

Sri Srikantan while studying at Mysore University came to the attention of the Registrar of the University who was respected for his scholarship in Indian Philosophy. This resulted in his marriage to the Registrar's daughter, Smt. Saraswathi.

Sri. Srikantan started his career as a Professor of Economics in Madurai and later at Lingaraj College, Belgaum. In both places he published books and articles. During the early forties, Sir Mirza Ismail brought him to Mysore to become the Assistant Director of Industries. Designing and implementing new ways to market the Chennapatna toys, was his main contribution to the development of rural industries. He later became the Director of Industries and Textile Commissioner in Indore. Indore was a decadent and backward State in the forties, dotted with many textile mills owned by Marwadi business men. He managed to deal with all the intricacies of dealing with the mill owners and brought Indore to the mainstream of the Indian States in a short period of time. The books he published during his term in Indore are still considered key texts in the development of local industries.

Unfortunately he succumbed to a serious illness at a very young age and passed away at the age of forty four, leaving behind his wife and four children.

This book is an edited version of Prof. Srikantan's unpublished dissertation (which he had written in the late 1930s) for a Ph.D. The manuscript was retrieved recently by his daughter Mrs. Leela Gulati. It is a scholarly work on the practices and administration of justice in ancient India.

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